

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
Otto Bock HealthCare North America, Inc.,)
a corporation,)
)
Respondent)
_____)

Docket No. 17-0517

ORIGINAL

NON-PARTY ÖSSUR AMERICAS, INC.’S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party Össur Americas, Inc. (“Ossur”) respectfully moves this Court for *in camera* treatment of competitively-sensitive, confidential business documents (the “Confidential Documents”) and portions of deposition transcripts of Ossur Executive Vice President Kim DeRoy (“Deposition Excerpts”). Ossur produced the Confidential Documents, among others, in response to a Federal Trade Commission (“FTC”) Civil Investigative Demand issued on November 9, 2017, and to an FTC subpoena duces tecum issued on March 5, 2018. As part of this matter, the FTC deposed Mr. DeRoy on December 6, 2017, and the FTC and Otto Bock HealthCare North America, Inc. (“Respondent”) deposed him on March 23, 2018. The FTC and Respondent have notified Ossur that they intend to introduce the deposition transcripts, the Confidential Documents, and other Ossur documents into evidence at the administrative trial in this matter. See Letter from the FTC dated May 25, 2018 (attached as Exhibit A) and Letter from Respondent dated May 29, 2018 (attached as Exhibit B).

The Confidential Documents and Deposition Excerpts contain confidential business information, such that if they became part of the public record, Ossur would be significantly

harmful in its ability to compete in the prosthetics industry. For the reasons discussed in this motion, Ossur requests that this Court afford the Confidential Documents and Deposition Excerpts *in camera* treatment as specified below, copies of which are attached hereto in Exhibit C. In support of this motion, Ossur relies on the Declaration of Kim DeRoy attached as Exhibit D, which provides additional details on the Confidential Documents and Deposition Excerpts.

ARGUMENT

In camera treatment of a document is appropriate when its “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment.” 16 C.F.R. § 3.45(b). A proponent demonstrates serious competitive injury by showing that the documents are secret and material to proponent’s business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In this context, and particularly with respect to a non-party such as Ossur, the Commission generally attempts “to protect confidential business information from unnecessary airing.” *HP. Hood & Sons, Inc.*, 58 F.T.C. 1184-88 (1961) (“There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.”).

In evaluating secrecy and materiality, the Commission analyzes the following factors: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977). As explained below, and in Mr. DeRoy’s

Declaration, the information contained in the Confidential Documents and Deposition Excerpts is both secret and material to Ossur's business, and therefore satisfies the standard for *in camera* treatment.

I. OSSUR'S CONFIDENTIAL DOCUMENTS AND DEPOSITION EXCERPTS ARE HIGHLY SECRET AND MATERIAL TO OSSUR'S BUSINESS SUCH THAT DISCLOSURE WOULD RESULT IN SERIOUS INJURY

Ossur seeks *in camera* treatment for the Confidential Documents and Deposition Excerpts specified below. When producing the Confidential Documents, Ossur marked each as confidential and included this designation in the production cover letters. The Confidential Documents are internal documents that have not been shared outside Ossur, aside from Ossur's attorneys and outside advisors subject to a confidentiality agreement.

A. Documents detailing Ossur's merger and acquisition efforts and strategies

Ossur requests the following documents be afforded indefinite *in camera* treatment:

Exhibit	Description
RX-0878 (OSSUR-3P-00000161)	Project Fox - M&A Gate - Corporate Development
PX03012 (OSSUR-3P-00000211)	Ossur Presentation: Project Fox M&A PRE Gate 3
RX-0472 (OSSUR-OTTO-00001869)	Presentation - Corporate Development - Project Fox - M&A Gate 1.5
RX-0517 (OSSUR-OTTO-00001919)	Corporate Development - Project Fox - M&A PRE Gate 3
RX-0526 (OSSUR-OTTO-00002787)	Email chain between Ossur personnel re: Project Fox – Quattro

These documents are internal discussions regarding a highly-sensitive, abandoned transaction. For every potential transaction, Ossur performs due diligence, market research, financial, and strategic analyses. The documents contain the specific details of such analyses, including revenue outlooks and competitive intelligence on potential bidders. These documents will remain competitively sensitive indefinitely because they include granular insights into

Ossur's operations, sales, development, growth strategies, competitive positioning, and acquisition strategy. Competitors could use this information to pivot their marketing and product development efforts to win customers. Potential acquisition targets and competing bidders could use it to gain negotiating advantages in future transactions. This Court has previously recognized that internal documents relating to potential transactions are highly sensitive and appropriate for *in camera* treatment. See *In the Matter of 1-800 Contacts, Inc.*, 9372, 2017 WL 1345290, at *4 (Apr. 4, 2017) (granting AEA Investors *in camera* treatment for presentations regarding a proposed acquisition).

Ossur also requests the following documents be redacted to remove confidential information as proposed in Exhibit C indefinitely:

Exhibit	Description
RX-0531 (OSSUR-3P-00000353)	Letter from Jon Sigurdsson to Jon Hammack and Mark Webber re: Project Roosevelt - Ossur Proposal
RX-0475/PX03102 (OSSUR-OTTO-00001009)	Letter from Jon Sigurdsson to Jon Hammack and Mark Webber re: Project Roosevelt - Non-Binding Proposal
RX-0532 (OSSUR-OTTO-00001163)	Letter from Ossur to Jon Hammack and Mark Webber re: Project Roosevelt - Ossur Proposal

These are letters from Ossur to Moelis, an outside advisor, for a highly-sensitive, abandoned transaction subject to strict confidentiality protections. Ossur requests redaction of its valuation details and transaction issues list as these show the culmination of Ossur's diligence efforts and analyses of the target. This type of sensitive strategic information has previously received *in camera* treatment. See *In the Matter of Jerk, LLC*, 9361, 2015 WL 926508, at *5 (Feb. 23, 2015) (granting Stripe *in camera* treatment for documents containing underwriting and risk analysis detail).

B. Documents describing Ossur's research and development efforts

Ossur requests the following documents be afforded indefinite *in camera* treatment:

Exhibit	Description
RX-0880 (OSSUR-OTTO-00000823)	Ossur presentation - Gate 4 - Final Audit - Rheo Knee
RX-0082/PX03245 (OSSUR-OTTO-00000863)	Ossur - Gate 2 - Business Case Review
RX-0486/PX03246 (OSSUR-OTTO-00000932)	Ossur - Gate 4 - Final Audit Product Release - D150909 - Rheo Knee 3.5 – Presentation
RX-0292 (OSSUR-OTTO-00000968)	Ossur - Gate 1 - Project Concept Approval - D16501 - Rheo Knee Explore
RX-0881 (OSSUR-OTTO-00000986)	Ossur - Product Idea Description - Rheo Knee Explore
RX-0192 (OSSUR-OTTO-00000745)	Ossur Presentation - Gate 2 - Business Case Review - D130805 - Power Knee Mainstream
RX-0088 (OSSUR-OTTO-00000624)	2015 Product Line Plan - Bionic Knees - Hildur Einarsdottir
RX-0849 (OSSUR-OTTO-00002169)	Ossur - Product Profile - RHEO Knee RHEO Knee XC - D150909
RX-0853 (OSSUR-OTTO-00001661)	Ossur - Launch Plan - RHEO Knee XC & RHEO Knee 3

These documents are all internal Ossur presentations discussing product development and launch plans. They are created to plan the design, testing, launch, and marketing of new prosthetics. Ossur prepares market assessments and competitive analyses to understand where a new product strategically fits in Ossur's portfolio and the overall industry. They include plans for product launches that extend several years beyond development. Public airing of these documents would give competitors insights into Ossur's planned product capabilities and allow them to position products to counteract Ossur's research and development ("R&D") investments. *In the Matter of Polypore Int'l, Inc., 9327, 2009 WL 1353461, at *3 (May 6, 2009) (granting in camera treatment for documents reflecting Entek's product testing and related strategy).*

These documents should be granted *in camera* status indefinitely because they also contain trade secrets regarding Ossur’s product design and development. The presentations include design specifications and drawings detailing product components. Publication of these details would give competitors insights into Ossur’s product capabilities and allow them to replicate Ossur technology and invalidate Ossur’s R&D investments. Moreover, Ossur’s product development and launch plans show its design process and launch strategy, which remains similar over time. Product development and launch lifecycles in this industry can take 10 years and the core technology will remain relevant for future products beyond that with long-term effects on Ossur’s product portfolio and strategy. Competitors could use these documents in developing, launching, and promoting new products to negatively impact Ossur. Trade secret information routinely receives *in camera* treatment. *See In the Matter of Tronox Ltd*, 9377, 2018 WL 2336016, at *4 (May 15, 2018) (granting indefinite *in camera* treatment for “secret product formulas and qualification processes”).

C. Documents providing Ossur’s pricing, sales, strategy, and positioning against competitors

Ossur requests the following documents be afforded *in camera* treatment or redacted, as specified, indefinitely, or for at least a time period of no less than 5 years¹:

Exhibit	Description	Type(s) of Information	Request
PX03106 (OSSUR-OTTO-00003492)	Ossur Spreadsheet: 2017 Prosthetic Pricing for Ceiling	Prices, discounts margins, pricing strategy	<i>In camera</i> treatment
RX-0883 (OSSUR-OTTO-00003499)	Ossur Knee Sales	Margins, costs	<i>In camera</i> treatment

¹ For OSSUR-OTTO-00003499 Ossur requests indefinite *in camera* treatment because the document contains particularly sensitive cost information which, if made public, could harm Ossur’s customer relationships and industry reputation.

Exhibit	Description	Type(s) of Information	Request
PX03247 (OSSUR-OTTO-00001005)	Ossur Document: Key Selling Points for Power Knee	Sales strategy	<i>In camera</i> treatment
PX03248 (OSSUR-OTTO-00001068)	Ossur Document: Key Selling Points for Rheo Knee XC	Sales strategy	<i>In camera</i> treatment
RX-0344 (OSSUR-OTTO-00001823)	Marketing Intelligence - Quarterly Report - Prosthetics – 2017	Market intelligence, pricing strategy	<i>In camera</i> treatment
RX-0343/PX03098 (OSSUR-OTTO-00000052)	Ossur - 2017 Prosthetic Pricing	Prices	Redact

The above documents contain Ossur’s competitively sensitive business information which includes pricing and pricing strategy, discount, margin, cost, sales strategy, and market intelligence information. These categories of information and their competitive significance to Ossur and the prosthetics industry are described further below.

1. Pricing (including pricing strategy), discount, margin, and cost information

Pricing, discount, margin and cost information is competitively sensitive because competitors could use it to adjust their own prices or sales strategies to disadvantage Ossur. *See In the Matter of Polypore Int’l, Inc.*, 2009 WL 1499350, at *5 (May 13, 2009) (granting *in camera* treatment for “costing data” and “sales and financial information”). This information will remain sensitive over time because customers and their cost structures within the microprocessor prosthetics industry change slowly. In particular, margin and discount information could be utilized by competitors and damage Ossur’s industry and customer relationships. Margin and cost data also reflects Ossur’s broader pricing strategy. If made public, this information would provide competitors insight into Ossur’s pricing range and its discount strategy. This type of information has previously received *in camera* treatment. *In the*

Matter of 1-800 Contacts, Inc., 9372, 2017 WL 1345290, at *7 (Apr. 4, 2017) (granting Luxottica *in camera* treatment for internal documents including detailed sales data).

2. Sales strategy

Ossur's sales strategy is competitively sensitive because it details how to position Ossur products relative to competitors and would give competitors insight into Ossur's marketing strategy. In turn, this could inform competitors marketing strategies and disadvantage Ossur. Ossur typically labels these types of documents as "Internal Use Only," reflecting that Ossur considers this information sensitive and its efforts to keep this data out of public view. Sensitive customer and sales information has previously received *in camera* treatment. *In the Matter of 1-800 Contacts, Inc.*, 9372, 2017 WL 1345290, at *4 (Apr. 4, 2017) (granting WebEyeCare *in camera* treatment for internal documents reflecting customer acquisition strategy and related analyses).

3. Market intelligence

Ossur invests considerable resources into developing an understanding of market size, shares, growth, and purchasing trends and has procedures to keep this information confidential. Ossur-compiled market intelligence is competitively sensitive, and will remain so indefinitely, not only because it only contains sensitive figures like sales and share estimates, but also because it reflects Ossur positioning and pricing strategy against competitors. Competitors could use this information to adjust their marketing strategy or development efforts to re-position against Ossur. This type of sensitive information has previously received *in camera* treatment. *In the Matter of 1-800 Contacts, Inc.*, 9372, 2017 WL 1345290, at *5 (Apr. 4, 2017) (granting Coastal *in camera* treatment for internal documents containing competitive positioning, marketing, and bidding strategy information).

D. Deposition Excerpts

Ossur requests that the following limited portions of Mr. DeRoy's two deposition transcripts be redacted to protect Ossur's competitively sensitive information.

December 6, 2017 Deposition of Kim DeRoy (Exhibit No. RX-1002-00001)	
Transcript Cite(s)	Description
19:3-7	Ossur's distributor usage and percentage of sales
20:5-6, 9-10, 13-14	Ossur's prosthetic revenues
47:19-22; 48:1-5	Clinic pricing with discounts/rebates
48:22-25	Ossur R&D and planned product development
59:7-10	Ossur R&D costs for knee development
61:22-25; 62:2-3; 71:6	Ossur's proposed acquisition valuation

March 23, 2018 Deposition of Kim DeRoy (Exhibit No. RX-0985-00001)	
Transcript Cite(s)	Description
16:12-13, 17-23; 17:1	Ossur's prosthetic revenues
19:22-24	Ossur acquired product revenues
21:2-3; 24:4-7	Ossur's prosthetic unit sales
47:17-21	Ossur's cost and time to develop Rheo knee
53:17-21	Ossur's product development approval lifecycle
109:21-23	Customer discount for lower limb prosthetics
111:13-24; 112:1-3	U.S. customer detail
115:7	Ossur's proposed acquisition valuation
147:3	Ossur's prosthetic unit sales
161:13-14	Ossur's R&D budget for prosthetics
208:19; 216:13; 217:3-4, 10	Ossur's proposed acquisition valuation
225:18	Ossur's prosthetic unit sales
236:13-14	Ossur's prosthetic revenues

The sensitive information discussed in Mr. DeRoy's deposition includes: R&D, sales and revenue, and marketing/sales strategy. Mr. DeRoy is currently Ossur's Executive Vice President

of R&D and a former Vice President in sales and marketing. He also sits on Ossur's executive management board and reports directly to Ossur's Chief Executive Officer. During his deposition Mr. DeRoy was required to provide sensitive nonpublic information.

As discussed above, R&D information is sensitive because it would give competitors insights into Ossur's planned product capabilities and the ability to position products to counteract Ossur's R&D efforts. *See In the Matter of Tronox Ltd*, 9377, 2018 WL 2336016, at *4 (May 15, 2018). Sales and revenue information is sensitive because it provides nonpublic information about Ossur's business strengths and weaknesses that competitors could utilize to harm Ossur. *See In the Matter of Polypore Int'l, Inc.*, 2009 WL 1499350, at *5 (May 13, 2009). Finally, marketing and sales strategy information is sensitive because it reveals Ossur's product positioning strategy relative to competitors and would provide them significant intelligence to use against Ossur. *See In the Matter of 1-800 Contacts, Inc.*, 9372, 2017 WL 1345290, at *5 (Apr. 4, 2017).

II. CONCLUSION

For the reasons set forth above and in the Declaration, Ossur respectfully requests that this Court grant the requested *in camera* treatment to the Confidential Documents and Deposition Excerpts.

Dated: June 11, 2018

Respectfully Submitted,

Amanda P. Reeves

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*Attorney for Non-Party
Ossur Americas, Inc.*

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	PUBLIC
)	
Otto Bock HealthCare North America, Inc., a corporation,)	Docket No. 9378
)	
Respondent)	
)	

**[PROPOSED] ORDER
ON NON-PARTY ÖSSUR AMERICAS, INC.'S MOTION FOR *IN CAMERA*
TREATMENT**

Upon consideration of non-party Össur Americas, Inc.'s Motion for *In Camera* Treatment, and finding good cause, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment on an indefinite basis:

Exhibit Number	Description
RX-0878 (OSSUR-3P-00000161)	Project Fox - M&A Gate - Corporate Development
PX03012 (OSSUR-3P-00000211)	Ossur Presentation: Project Fox M&A PRE Gate 3
RX-0472 (OSSUR-OTTO-00001869)	Presentation - Corporate Development - Project Fox - M&A Gate 1.5
RX-0517 (OSSUR-OTTO-00001919)	Corporate Development - Project Fox - M&A PRE Gate 3
RX-0526 (OSSUR-OTTO-00002787)	Email chain between Ossur personnel re: Project Fox – Quattro
RX-0880 (OSSUR-OTTO-00000823)	Ossur presentation - Gate 4 - Final Audit - Rheo Knee
RX-0082/PX03245 (OSSUR-OTTO-00000863)	Ossur - Gate 2 - Business Case Review
RX-0486/PX03246 (OSSUR-OTTO-00000932)	Ossur - Gate 4 - Final Audit Product Release - D150909 - Rheo Knee 3.5 – Presentation
RX-0292 (OSSUR-OTTO-00000968)	Ossur - Gate 1 - Project Concept Approval - D16501 - Rheo Knee Explore
RX-0881 (OSSUR-OTTO-00000986)	Ossur - Product Idea Description - Rheo Knee Explore

Exhibit Number	Description
RX-0192 (OSSUR-OTTO-00000745)	Ossur Presentation - Gate 2 - Business Case Review - D130805 - Power Knee Mainstream
RX-0088 (OSSUR-OTTO-00000624)	2015 Product Line Plan - Bionic Knees - Hildur Einarsdottir
RX-0849 (OSSUR-OTTO-00002169)	Ossur - Product Profile - RHEO Knee RHEO Knee XC - D150909
RX-0853 (OSSUR-OTTO-00001661)	Ossur - Launch Plan - RHEO Knee XC & RHEO Knee 3
PX03106 (OSSUR-OTTO-00003492)	Ossur Spreadsheet: 2017 Prosthetic Pricing for Ceiling
RX-0883 (OSSUR-OTTO-00003499)	Ossur Knee Sales
PX03247 (OSSUR-OTTO-00001005)	Ossur Document: Key Selling Points for Power Knee
PX03248 (OSSUR-OTTO-00001068)	Ossur Document: Key Selling Points for Rheo Knee XC
RX-0344 (OSSUR-OTTO-00001823)	Marketing Intelligence - Quarterly Report - Prosthetics – 2017

Additionally, the following documents will be redacted on an indefinite basis as follows:

Exhibit Number	Description	Content to Redact
RX-0343/PX03098 (OSSUR-OTTO-00000052)	Ossur - 2017 Prosthetic Pricing	Pages 1-2, column "List Price"
RX-0531 (OSSUR-3P-00000353)	Letter from Jon Sigurdsson to Jon Hammack and Mark Webber re: Project Roosevelt - Ossur Proposal	Pg. 2, section "2. VALUATION," second paragraph
RX-0475/PX03102 (OSSUR-OTTO-00001009)	Letter from Jon Sigurdsson to Jon Hammack and Mark Webber re: Project Roosevelt - Non-Binding Proposal	Pg. 1, section "2. INDICATIVE PURCHASE PRICE," second paragraph; Pg. 3, section "5. SALES PROCESS SCHEDULE," paragraph and bullet points starting "The following . . ."
RX-0532 (OSSUR-OTTO-00001163)	Letter from Ossur to Jon Hammack and Mark Webber re: Project Roosevelt - Ossur Proposal	Pg. 2, Section "2. VALUATION," second paragraph
RX-0985-00001	Investigational Hearing Transcript of Kim Peter DeRoy (Ossur)	19:3-7; 20:5-6, 9-10, 13-14; 47:19-22; 48:1-5, 22-25; 59:7-10; 61:22-25; 62:2-2; 71:6

Exhibit Number	Description	Content to Redact
RX-1002-00001	Deposition Transcript of Kim DeRoy (Ossur)	16:12-13, 17-23; 17:1; 19:22-24; 21:2-3; 24:4-7; 47:17-21; 53:17-21; 109:21-23; 111:13-24; 112:1-3; 115:7; 147:3; 161:13-14; 208:19; 216:13; 217:3-4, 10; 225:18; 236:13-14

ORDERED:

The Honorable D. Michael Chappell
Chief Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I, Amanda P. Reeves, declare under penalty of perjury that the following is true and correct. On June 11, 2018, I caused to be served the following documents on the parties listed below by the manner indicated.

- NON-PARTY ÖSSUR AMERICAS, INC.'S MOTION FOR *IN CAMERA* TREATMENT
- [PROPOSED] ORDER

The Office of the Secretary (via FTC E-Filing System)

Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Office of the Administrative Law Judge (via FTC E-Filing System):

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-110
Washington, D.C. 20580

Complaint Counsel for Federal Trade Commission (via FTC E-Filing System):

Steven Lavender, Esquire
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC, 20580

Counsel for Otto Bock (via FTC E-Filing System):

Christopher Casey, Esquire
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196



Amanda P. Reeves
Attorney

EXHIBIT A



Bureau of Competition
Mergers I Division

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 25, 2018

VIA EMAIL

Ossur hf.
c/o Amanda Reeves, Esq.
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

RE: *In the Matter of Otto Bock HealthCare North America, Inc., Federal Trade Commission Dkt. No. 9378*

Dear Mandy:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on July 10, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

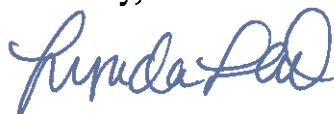
For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). You must also provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Please be aware that under the current Scheduling Order dated April 26, 2018, the deadline for filing motions seeking *in camera* status is June 11, 2018.

If you have any questions, please feel free to contact me at (202) 326-3054.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lynda Lao".

Lynda Lao
Counsel Supporting the Complaint

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
PX03012	Ossur Presentation: Project Fox M&A PRE Gate 3	8/22/2017	OSSUR-3P-00000211	OSSUR-3P-00000239
PX03097	Ossur Document: Rheo Knee Health Economics Analysis for Rheo Kne 3 and Rheo Knee XC	00/00/0000	OSSUR-OTTO-00000027	OSSUR-OTTO-00000038
PX03098	Ossur Spreadsheet: 2017 Prosthetic Pricing	00/00/2017	OSSUR-OTTO-00000052	OSSUR-OTTO-00000053
PX03099	Ossur Brochure: Rheo Knee 3	00/00/0000	OSSUR-OTTO-00000088	OSSUR-OTTO-00000089
PX03100	Ossur Presentation: Rheo Knee 3 Instructions for Use	00/00/0000	OSSUR-OTTO-00000090	OSSUR-OTTO-00000303
PX03102	Letter from Ossur CEO to Moelis & Company re: Project roosevelt - Non-Binding Proposal	7/26/2017	OSSUR-OTTO-00001009	OSSUR-OTTO-00001012
PX03103	Ossur Presentation: Product Profile: Rheo Knee, Rheo Knee XC	3/12/2018	OSSUR-OTTO-00002169	OSSUR-OTTO-00002193
PX03106	Ossur Spreadsheet: 2017 Prosthetic Pricing for Ceiling	1/31/2017	OSSUR-OTTO-00003492	OSSUR-OTTO-00003492
PX03242	Ossur Document: Rheo Knee Step-by-Step Guide	08/00/2017	OSSUR-OTTO-00000314	OSSUR-OTTO-00000328
PX03245	Ossur Presentation: Gate 2 -Business Case Review for RHEO 3+	8/24/2015	OSSUR-OTTO-00000863	OSSUR-OTTO-00000897
PX03246	Ossur Presentation: Gate 4 - Final Audit and Product Release	8/2/2017	OSSUR-OTTO-00000932	OSSUR-OTTO-00000967
PX03247	Ossur Document: Key Selling Points for Power Knee	00/00/0000	OSSUR-OTTO-00001005	OSSUR-OTTO-00001008
PX03248	Ossur Document: Key Selling Points for Rheo Knee XC	00/00/0000	OSSUR-OTTO-00001068	OSSUR-OTTO-00001071
PX03256	Ossur Document: Rheo Knee Family Product Comparison	00/00/0000	OSSUR-OTTO-00001991	OSSUR-OTTO-00001993
PX05124	Deposition Transcript of Kim DeRoy (Ossur)	3/23/2018	PX05124-001	PX05124-114

EXHIBIT B

NEW YORK
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A GCC REPRESENTATIVE OFFICE
OF DUANE MORRIS
ALLIANCES IN MEXICO
AND SRI LANKA

May 29, 2018

VIA EMAIL AND FEDEX

Össur hf.
c/o Amanda Reeves
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555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304
Amanda.Reeves@lw.com

Re: In the Matter of Otto Bock HealthCare North America, Inc., Federal Trade Commission Dkt. No. 9378

Dear Ms. Reeves,

By this letter, we are providing formal notice, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Respondent Counsel intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on July 10, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); and *In re Basic*

May 29, 2018
Page 2

Research, Inc., 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). You must also provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Please be aware that under the current Scheduling Order dated April 26, 2018, the deadline for filing motions seeking *in camera* status is June 11, 2018.

If you have any questions, please feel free to contact me at 215-979-1947.

Very truly yours,

/s/ Sean P. McConnell

Sean P. McConnell

TAL
Enclosures

cc: Sean S. Zabaneh
Sarah O'Laughlin Kulik

Attachment A

PUBLIC

Exhibit No.	Description	Date	BegBates	EndBates
RX-0985-00001	Investigational Hearing Transcript of Kim Peter DeRoy (Ossur)	12/6/2017	RX-0985-00001	RX-0985-00032
	Deposition Transcript of Kim Peter DeRoy	3/23/2018	RX-1002-00001	RX-1002-00114
RX-0555 (FTC-OSUR-000001)	Ossur - Capital Markets Day 2017 - Copenhagen – Presentation	09/27/2017	FTC-OSUR-000001	FTC-OSUR-000058
RX-0342 (OSSUR-3P-00000096- OSSUR-3P-00000096)	Prosthetic Knees by Ossur Product List	01/01/2017	OSSUR-3P-00000096	OSSUR-3P-00000096
RX-0878 (OSSUR-3P-00000161- OSSUR-3P-00000210)	Project Fox - M&A Gate - Corporate Development	07/25/2017	OSSUR-3P-00000161	OSSUR-3P-00000210
RX-0531 (OSSUR-3P-00000353- OSSUR-3P-00000355)	Letter from Jon Sigurdsson (Ossur) to Jon Hammack and Mark Webber (Moelis) re: Project Roosevelt - Ossur Proposal	08/31/2017	OSSUR-3P-00000353	OSSUR-3P-00000355
RX-0343 (OSSUR-OTTO-00000052)	Ossur - 2017 Prosthetic Pricing	01/01/2017	OSSUR-OTTO-00000052	OSSUR-OTTO-00000053
RX-0088 (OSSUR-OTTO-00000624)	2015 Product Line Plan - Bionic Knees - Hildur Einarsdottir	09/12/2015	OSSUR-OTTO-00000624	OSSUR-OTTO-00000649
RX-0192 (OSSUR-OTTO-00000745)	Ossur Presentation - Gate 2 - Business Case Review - D130805 - Power Knee Mainstream	04/27/2016	OSSUR-OTTO-00000745	OSSUR-OTTO-00000789
RX-0880 (OSSUR-OTTO-00000823)	Ossur presentation - Gate 4 - Final Audit - Rheo Knee	01/02/2016	OSSUR-OTTO-00000823	OSSUR-OTTO-00000862
RX-0082 (OSSUR-OTTO-00000863)	Ossur - Gate 2 - Business Case Review	08/24/2015	OSSUR-OTTO-00000863	OSSUR-OTTO-00000897
RX-0486 (OSSUR-OTTO-00000932)	Ossur - Gate 4 - Final Audit Product Release - D150909 - Rheo Knee 3.5 – Presentation	08/02/2017	OSSUR-OTTO-00000932	OSSUR-OTTO-00000967

Exhibit No.	Description	Date	BegBates	EndBates
RX-0292 (OSSUR-OTTO-00000968)	Ossur - Gate 1 - Project Concept Approval - D16501 - Rheo Knee Explore	09/30/2016	OSSUR-OTTO-00000968	OSSUR-OTTO-00000985
RX-0881 (OSSUR-OTTO-00000986)	Ossur - Product Idea Description - Rheo Knee Explore	03/15/2018	OSSUR-OTTO-00000986	OSSUR-OTTO-00000988
RX-0475 (OSSUR-OTTO-00001009)	Letter from Jon Sigurdsson (Ossur) to Jon Hammack and Mark Webber (Moelis) re: Project Roosevelt - Non-Binding Proposal	07/26/2017	OSSUR-OTTO-00001009	OSSUR-OTTO-00001012
RX-0532 (OSSUR-OTTO-00001163)	Letter from Ossur to Jon Hammack and Mark Webber (Moelis) re: Project Roosevelt - Ossur Proposal	08/31/2017	OSSUR-OTTO-00001163	OSSUR-OTTO-00001165
RX-0853 (OSSUR-OTTO-00001661)	Ossur - Launch Plan - RHEO Knee XC & RHEO Knee 3	03/16/2018	OSSUR-OTTO-00001661	OSSUR-OTTO-00001687
RX-0344 (OSSUR-OTTO-00001823)	Marketing Intelligence - Quarterly Report - Prosthetics – 2017	01/01/2017	OSSUR-OTTO-00001823	OSSUR-OTTO-00001837
RX-0472 (OSSUR-OTTO-00001869)	Presentation - Corporate Development - Project Fox - M&A Gate 1.5	07/25/2017	OSSUR-OTTO-00001869	OSSUR-OTTO-00001918
RX-0517 (OSSUR-OTTO-00001919)	Corporate Development - Project Fox - M&A PRE Gate 3	08/22/2017	OSSUR-OTTO-00001919	OSSUR-OTTO-00001947
RX-0882 (OSSUR-OTTO-00001977)	Ossur Presentation - Rheo Family - Rheo 3W and RKXC Characteristics	03/16/2018	OSSUR-OTTO-00001977	OSSUR-OTTO-00001983
RX-0849 (OSSUR-OTTO-00002169)	Ossur - Product Profile - RHEO Knee RHEO Knee XC - D150909	03/12/2018	OSSUR-OTTO-00002169	OSSUR-OTTO-00002193
RX-0728 (OSSUR-OTTO-00002661)	Email chain from Kim DeRoy to Maynard Carkhuff re: Congratulations	12/12/2017	OSSUR-OTTO-00002661	OSSUR-OTTO-00002661
RX-0482 (OSSUR-OTTO-00002772)	Email chain from Alex Coffin to Mark Webber, et al., cc: Christian Robinson, et al., re: Non-Binding Offer	08/01/2017	OSSUR-OTTO-00002772	OSSUR-OTTO-00002774
RX-0526 (OSSUR-OTTO-00002787)	Email chain from Thomas Beckers, et al., to Jon Sigurosson, Christian Robinson re: Project Fox – Quattro	08/26/2017	OSSUR-OTTO-00002787	OSSUR-OTTO-00002788
RX-0883 (OSSUR-OTTO-00003499)	Ossur Knee Sales	Unknown	OSSUR-OTTO-00003499	OSSUR-OTTO-00003499

EXHIBIT C

Exhibit RX-0878

(OSSUR-3P-00000161)

**Filed *in camera* and withheld from
Public Version**

Exhibit PX03012

(OSSUR-3P-00000211)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0472
(OSSUR-OTTO-00001869)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0517
(OSSUR-OTTO-00001919)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0526
(OSSUR-OTTO-00002787)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0880
(OSSUR-OTTO-00000823)

**Filed *in camera* and withheld from
Public Version**

**Exhibit RX-0082/PX03245
(OSSUR-OTTO-00000863)**

**Filed *in camera* and withheld from
Public Version**

**Exhibit RX-0486/PX03246
(OSSUR-OTTO-00000932)**

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0292
(OSSUR-OTTO-00000968)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0881
(OSSUR-OTTO-00000986)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0192
(OSSUR-OTTO-00000745)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0088
(OSSUR-OTTO-00000624)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0849
(OSSUR-OTTO-00002169)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0853
(OSSUR-OTTO-00001661)

**Filed *in camera* and withheld from
Public Version**

Exhibit PX03106
(OSSUR-OTTO-00003492)

**Filed *in camera* and withheld from
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Exhibit RX-0883
(OSSUR-OTTO-00003499)

**Filed *in camera* and withheld from
Public Version**

Exhibit PX03247
(OSSUR-OTTO-00001005)

**Filed *in camera* and withheld from
Public Version**

Exhibit PX03248
(OSSUR-OTTO-00001068)

**Filed *in camera* and withheld from
Public Version**

Exhibit RX-0344
(OSSUR-OTTO-00001823)

**Filed *in camera* and withheld from
Public Version**



Moelis & Company
399 Park Avenue, 5th Floor
New York, New York 10022

Attn.:
Jon Hammack (jon.hammack@moelis.com)
Mark Webber (mark.webber@moelis.com)

Reykjavik, August 31, 2017

Re: Project Roosevelt – Ossur Proposal

Dear Sirs,

We refer to your process letter dated August 1, 2017 (the “Process Letter”), inviting Össur to submit a final proposal (“Proposal”) for the acquisition of Freedom Innovations (the “Company”). Below is information on our Proposal.

1. CONTACT

Össur is a global leader in the non-invasive orthopaedics market, within the fields of bracing and supports and prosthetics. Össur is headquartered in Reykjavik, Iceland, and has over 2800 employees in over 20 countries across the Americas, Australia, Europe and Asia.

Össur is publicly listed on NASDAQ in Copenhagen. For further information on the Össur business, ownership structure and key subsidiaries, please refer to our website, www.ossur.com.

Össur has engaged Deloitte and Proskauer for its financial and legal diligence. Please make any requests to contact Össur’s advisors through the Össur contact below:

Thomas Beckers
Vice President of Corporate Development
Mobile: +354 664 1211
E-mail: tbeckers@ossur.com

Össur’s management team and advisors are available to discuss the terms of this Proposal. In accordance with our discussions with the Moelis team, we would expect to enter an exclusivity agreement for the final phase of negotiations. This Proposal expires September 30, 2017, though with full cooperation from the Company Össur believes the parties should be able to close within two weeks.



2. VALUATION

Our Proposal is for 100% of the issued and outstanding share capital of the Company:

[REDACTED]

Our valuation assumes a reverse triangular merger of a new Össur merger subsidiary into FIH Group Holdings, LLC which will be the surviving company. The valuation also assumes the ability to complete a post-closing 338 tax election and seller agreement to a reasonable purchase price allocation. The valuation also assumes agreement regarding reasonable net working capital adjustment calculations when that information is provided by the Company to Össur.

3. FINANCING

Consideration will be in the form of cash. Össur currently has access to sufficient funding to fund the acquisition. Össur has initiated discussions with its lenders regarding the acquisition and received assurances that lenders will move quickly to facilitate consummating the transaction within 2 weeks.

4. MANAGEMENT

At this time Össur has not finalized detailed plans regarding management and key employees since Össur has not had access to contracts nor employees. However, Össur notes that the valuation assumes a 100% equity ownership and full integration of the Company into Össur. Össur will offer terms of continued and/or transition services from key management for to-be-agreed periods from the closing of the acquisition. Össur would like to close agreements with selected managers before closing.

5. DILIGENCE

Össur's due diligence is largely completed with some requests remaining outstanding or promised to be provided in the next process phase. With full cooperation from the Company, Össur anticipates completing final confirmatory diligence quickly and no later than two weeks from acceptance of this Proposal.

6. APPROVALS AND CONDITIONS

Össur's Proposal is subject to completion of final confirmatory due diligence and final definitive documentation. Össur has received board approval to submit this Proposal and to consummate the transaction on consistent terms.

7. AGREEMENT

Össur has provided a mark-up of the proposed agreement concurrently herewith. Össur sought to provide sellers with flexibility in order to allow sellers to identify the more attractive transaction structure. Should representation and warranty insurance be undesirable for any reason, Össur has proposed an indemnity package which would be acceptable to Össur. In order to provide a quick and streamlined path to closing, we have proposed a simultaneous signing and closing as opposed to signing an agreement providing for a waiting period and a deferred closing. Össur is committed to submitting an attractive proposal and welcomes the opportunity to better understand the seller's preferences.



8. OTHER

This Proposal is solely an indication of interest and does not constitute a binding commitment on our part to enter into a definitive agreement for a transaction and is not intended to have any legal effect. Össur understands the Company's financial circumstances and lending timeline and is committed and prepared to close quickly and cooperate with the Company's efforts to manage lender requirements.

Yours sincerely,
on behalf of Össur hf.

A handwritten signature in black ink, appearing to read "Jon Sigurdsson", with a stylized flourish at the end.

Jon Sigurdsson,
Chief Executive Officer



2017 Prosthetic Pricing

Product	Impact Level	L-Code Description	Weight Limit	Warranty	Codes	PDAC Verified	List Price
Flex-Foot Products							
PROPRIO FOOT	Low-Mod	Ankle/foot with microprocessor controlled dorsiflexion/plantarflexion	275	24 months	5973, (7368 only for replacement charger)	Yes	
Re-Flex Rotate	Low-High	Shank foot system w/integrated shock and axial rotation	325	36 months	5987, 5984	Yes	
Re-Flex Shock	Low-High	Shank foot system w/integrated shock	365	36 months	5987	Yes	
Pro-Flex XC	Low-High	Flex-Foot system w/multi-axial rotation (includes foot cover)	365	36 months	5980, 5986		
Pro-Flex LP	Low-High	Flex-Walk or equal w/multi-axial rotation unit (includes foot cover)	365	36 months	5981, 5986		
Cheetah Xplore	Low-High		325	36 months			
K2 Sensation with D/P Flexion	Low	Flexible keel foot w/multi-axial ankle and swing phase active dorsiflexion (includes foot cover)	300	12 months	5972, 5968		
LP Rotate	Low-High	Flex-Walk or equal, w/vertical shock and axial rotation	325	36 months	5981, 5984, 5988		
Vari-Flex XC Rotate	Low-High	Shank foot system w/integrated shock and axial rotation	325	36 months	5987, 5984		
Vari-Flex Modular	Low-High	Flex-Foot system w/multi-axial rotation	365	36 months	5980, 5986		
Vari-Flex	Low-High	Flex-Foot system w/multi-axial rotation	365	36 months	5980, 5986		
LP Vari-Flex	Low-High	Flex-Walk or equal w/multi-axial rotation unit	365	36 months	5981, 5986		
Talux	Low-Mod	Flex-Foot system w/multi-axial rotation unit	325	36 months	5980, 5986		
Assure	Low	Flex-Walk or equal (includes foot cover)	300	36 months	5981		
Balance J Foot	Low	Energy storing foot (includes foot cover)	300	24 months	5976		
Flex-Foot Balance	Low	Flexible keel w/multi-axial rotation unit (includes foot cover)	300	12 months	5979	Yes	
Elation	Low-Mod	User adjustable heel height, energy storing foot (inc. foot cover)	220	12 months	5990, 5976		
Flex-Symes	Low-High	Flex-Walk or equal, alignable system	365	36 months	5981, 5910		
Chopart	Low-High	Energy storing foot	323	24 months	5976		
Cheetah Xplore Junior	Low-High		121	18 months	5980		
Vari-Flex Junior	Low-High	Flex-Foot system w/multi-axial rotation	121	18 months	5980		
D/P Flexion retrofit on K2 Sensation	Low	Multi-axial ankle with swing phase active dorsiflexion	300	12 months	5968		
K2 Sensation	Low	Flexible keel foot w/multi-axial rotation unit (includes foot cover)	300	12 months	5972, 5986		
Total Shock 4400, 4410	Low-High	Vertical shock reducing pylon w/axial rotation unit	220	12 months	5988, 5984		
Unity: (Select Rotate or Shock)							
**Re-Flex Rotate with Unity		Shank foot system w/integrated shock and axial rotation	325	36 months	5987, 5984		
**Re-Flex Shock with Unity		Shank foot system w/integrated shock	365	36 months	5987		
Unity System							
**Unity Pump Module with Valve Kit	Low-High	Lower limb prosthesis, vacuum pump, residual limb volume management and moisture evacaution system.	n/a	Pump Kit- 24 months Membrane- 12 months	5781		
Leg & Knee Systems							
SYMBIONIC LEG 3	Low-Mod	Microprocessor swing & stance knee with sensors integrated with ankle/foot with microprocessor controlled dorsiflexion/plantarflexion	275	36 months	5856, 5828, 5845, 5848, 5850, 5925, 5973 (7368 only for replacement charger)		
Bionic Leg Protector		Above knee flex cover system		6 months	5705		
POWER KNEE	Low-Mod	Microprocessor Swing & Stance with Sensors integrated with ankle/foot with microprocessor controlled dorsiflexion/plantarflexion	363	36 months	5856, 5828, 5845, 5848, 5859 (L5999 for replacement charger or batteries)	Yes	
POWER KNEE EUP	Low-Mod	Microprocessor Swing & Stance with Sensors, and with motor powered and programmable flexion/extension assist control.	363	36 months	5856, 5828, 5845, 5848, 5859 (L5999 for replacement charger or batteries)		
RHEO KNEE 3	Low-Mod	Microprocessor Swing & Stance with Sensors	300	36 months	5856, 5828, 5845, 5848, 5850, 5925 (7368 only for replacement charger)		
Cheetah Knee	Low-High	Endo 4-bar linkage, hydraulic swing, high activity frame	220	18 months	5613, 5930		
Total Knee 2100	Mod-Xtreme	Knee, polycentric, hydraulic swing phase, mechanical stance lock	275	24 months	5814, 5845, 5850		
Mauch Knee Plus	Mod-Xtreme	SNS High Activity Hydraulic Knee	365	36 months	5925, 5828, 5845		
Mauch Knee	Mod-Xtreme	SNS High Activity Hydraulic Knee	300	36 months	5925, 5828, 5845		
OH5 Knee with IKF adapter	Mod-High	Knee, polycentric, hydraulic swing phase, mechanical stance lock	220	24 months	5814, 5845, 5850		
Total Knee 2000	Mod-High	Knee, polycentric, hydraulic swing phase, mechanical stance lock	220	24 months	5814, 5845, 5850		
OHP3 Knee with IKF adapter	Mod-High	Knee 4-Bar linkage, pneumatic swing phase control	275	24 months	5840, 5845, 5850		
OP5 Knee with IKF adapter	Low-Mod	Knee 4-Bar linkage, pneumatic swing phase control	275	24 months	5840, 5845, 5850		
OP4 Knee	Low-Mod	Knee, single axis, pneumatic swing, friction stance control	220	24 months	5822, 5845, 5850		
Total Knee 1900	Low	Endo 4-Bar linkage, Polymer Friction Knee	220	24 months	5611, 5845, 5850		
Balance Knee	Low	Endo 4-Bar linkage, Polymer Friction Knee	275	24 months	5611, 5850	Yes	
Balance Knee w/ lock option	Low	Endo 4-Bar linkage, Polymer Friction Knee, w/ lock	275	24 months	5611, 5850, 5925		
Balance Knee OFM1 with IKF adapter	Low	Endo 4-Bar linkage, friction swing phase control	300	24 months	5611, 5845, 5850, 5925		
Balance Knee Control	Low	Single axis knee, friction, swing and stance phase control (Safety Knee)	275	24 months	5812, 5845, 5850, 5925		
Balance Knee OM8	Low	Knee 4-Bar linkage, with friction swing phase control	300	24 months	5611, 5850		
Balance Knee OFM2	Low	Single axis knee, friction swing and stance phase control (Safety Knee)	275	24 months	5812, 5845, 5850, 5925		
Locking Knee	Low	Lightweight locking knee	275	12 months	5811		
Total Knee Junior	All	Endo 4-Bar linkage, Pediatric Knee	100	24 months	5611, 5845, 5850		

The responsibility for accurate coding lies solely with the healthcare provider, Össur assumes no responsibility or liability for the provider's coding decisions.
 **Unity Pump Available on Pro-Flex XC, Pro-Flex LP, Re-Flex Rotate, Re-Flex Shock, Vari-Flex, PROPRIO FOOT, LP Vari-Flex, LP Rotate, Flex-Foot Assure, Balance Foot J, K2 Sensation and K2 Sensation with D Flex-Foot Rotate and Shock are discounted when purchased with the Unity system, and therefore show different list pricing than the list prices for the feet alone.



2017 Prosthetic Pricing

Product	Impact Level	L-Code Description	Weight Limit	Warranty	Codes	PDAC Verified	List Price
Liners & Sleeves							
Iceross TT Seal-In V	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross TT Seal-In V HP	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Seal-In X TF	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Seal-In X TF Ring	All	Addition to sock/liner annular retention seal	NA	6 months	5999		
Iceross TF Seal-In X5	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross TF Seal-In	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Transfemoral	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross TT Seal-In X	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross TT Seal-In X Ring	All	Addition to sock/liner annular retention seal	NA	6 months	5999		
Iceross TT Seal-In X5	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross TT Seal-In X5 w/ Wave	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Synergy Locking Wave	All	BK/AK Silicone Locking Liner	NA	9 months	5673		
Iceross Synergy Locking	All	BK/AK Silicone Locking Liner	NA	9 months	5673		
Iceross Dermo Locking Wave	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Dermo Conical Locking	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Dermo Locking	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Comfort Locking	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Comfort Wave Silken Surface	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Original Locking w/Cover	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Original Locking	All	BK/AK Silicone Locking Liner	NA	12 months	5673		
Iceross Dermo Uniform Locking	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Junior	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Sport	All	BK/AK Silicone Locking Liner	NA	6 months	5673		
Iceross Activa	All	Socket insert w/o lock mech	NA	9 months	5679		
Iceross Synergy Cushion Wave	All	Socket insert w/o lock mech	NA	9 months	5679		
Iceross Synergy Cushion	All	Socket insert w/o lock mech	NA	9 months	5679		
Iceross Dermo Cushion Wave	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Dermo Cushion	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Comfort Cushion	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Dermo Uniform Cushion	All	Socket insert w/o lock mech	NA	6 months	5679		
Iceross Sleeve	All	BK suspension/sealing sleeve	NA	3 months	5685		
Icelflex Endurance Sleeve	All	BK suspension/sealing sleeve	NA	3 months	5685		
Iceross Upper-X	All	Upper extremity silicone gel liner	N/A	6 months	6692		
4Seal Classic TFC	All	Socket insert w/o lock mech	N/A	6 months	5679		
4Seal Classic TFS	All	Socket insert w/o lock mech	N/A	6 months	5679		
AKOS TFC	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
AKOS TFS	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
Protect 3C	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
Protect 3C Cushion	All	Socket insert w/o lock mech	N/A	6 months	5679		
Relax 3C	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
Relax 3C Cushion	All	Socket insert w/o lock mech	N/A	6 months	5679		
Relax 6C	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
RELAX TFC	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
RELAX TFS	All	BK/AK Silicone Locking Liner	N/A	6 months	5673		
Sensitive 3C	Low-Mod	BK/AK Silicone Locking Liner	N/A	6 months	5673		
Sensitive 6C	Low-Mod	BK/AK Silicone Locking Liner	N/A	6 months	5673		

The responsibility for accurate coding lies solely with the healthcare provider, Össur assumes no responsibility or liability for the provider's coding decisions.
 **List pricing for Flex-Foot Rotate and Shock are discounted when purchased with the Unity system, and therefore show different list pricing than the list prices for the feet alone.

Stump Shrinkers

Stump Shrinker TT	All	Prosthetic shrinker, below knee, each	NA	6 months on compression	8440		
Stump Shrinker TF	All	Prosthetic shrinker, above knee, each	NA	6 months on compression	8460		



Moelis & Company
399 Park Avenue, 5th Floor
New York, New York 10022

Attn.:
Jon Hammack (jon.hammack@moelis.com)
Mark Webber (mark.webber@moelis.com)

Reykjavík, July 26, 2017

Re: Project Roosevelt – Non-Binding Proposal

Dear Sirs,

Thank you for including Össur in the sales process. We refer to your process letter dated June 22, 2017 (the "Process Letter"), inviting Össur to submit a preliminary non-binding proposal ("Non-Binding Proposal") for the acquisition of Freedom Innovations (the "Company"). Below is information on our Non-Binding Proposal.

1. INVESTING ENTITY & FINANCIAL CAPACITY

No decision has been made as to which Össur entity would acquire the Company. The ultimate structure will be driven primarily by tax considerations.

Össur is a global leader in the non-invasive orthopaedics market, within the fields of bracing and supports and prosthetics. Össur is headquartered in Reykjavik, Iceland, and has over 2800 employees in over 20 countries across the Americas, Australia, Europe and Asia. For the full financial year 2016, Össur had total sales of USD 521 million and net profit of USD 51 million.

Össur is publicly listed on NASDAQ OMX in Copenhagen. For further information on the Össur business, ownership structure and key subsidiaries, please refer to our website, www.ossur.com.

An acquisition would be financed with a mix of cash on hand and external debt. Össur is financed by three international banks, ING, Nordea and SEB, and there is ample room under existing committed facilities to conclude financing of an acquisition of the Company.

2. INDICATIVE PURCHASE PRICE

Our Non-Binding Proposal for 100% of the issued and outstanding share capital of the Company:

[REDACTED]

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, is located to the right of the redacted text.



3. ASSUMPTIONS AND VALUATION METHODOLOGY

We have calculated the purchase price on the basis of the information contained in the Information Memorandum dated June 2017 ("Information Memorandum"), including the financial outlook for the calendar year 2017, assuming no further adjustments/normalizations, and on the follow up information provided by Moelis & Company.

Freedom Innovations would be integrated into the Össur organization. Future prospects, growth opportunities and risk areas, as well as the outcome of the due diligence process, could potentially lead to a material change in valuation.

The valuation methodology is based on a cash and debt free basis.

4. CONDITIONS

Our Non-Binding Indicative Offer is subject to the following conditions and approvals:

- Satisfactory outcome of the due diligence process, including commercial, financial, tax and legal diligence
- Satisfactory outcome of negotiations with current owners and management
- Satisfactory documentation, including a share purchase agreement with customary representations and warranties for this type of transaction and satisfactory non-competition, non-solicitation and confidentiality clauses, as well as employment agreements with key employees
- Exposure to potential liabilities and warranties will be covered through an escrow account
- Regulatory approvals from all relevant authorities, as applicable
- Approval from Össur hf.'s Board of Directors

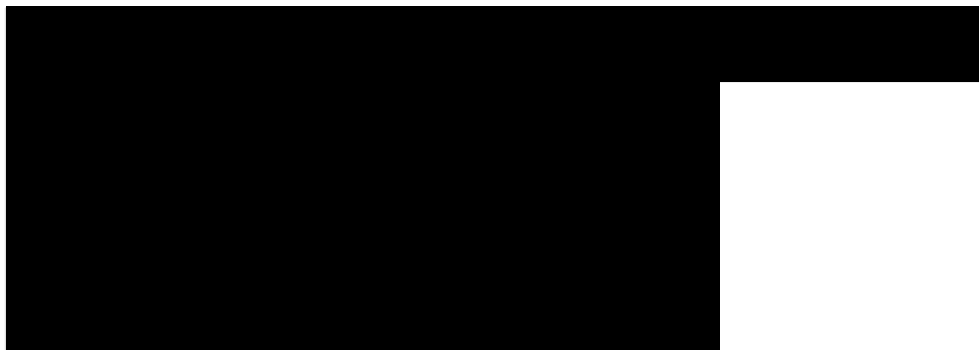
Össur does not anticipate that internal approvals or financing will impact its ability to timely consummate a potential transaction.

5. SALES PROCESS SCHEDULE, BUSINESS QUESTIONS AND DUE DILIGENCE

Össur plans on doing a customary confirmatory due diligence review of the Company, including financial, commercial, legal and tax review. Össur's due diligence request list has been transmitted concurrently herewith. Össur anticipates requiring three to four weeks for completion of confirmatory due diligence, depending on quality of information provided in the dataroom.

Due Diligence:	2 – 30 August 2017
On-site meeting in period of:	16 – 23 August 2017
Binding offer:	31 August 2017
SPA negotiations:	September 2017
Closing:	October 2017

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We are aware that the NDA needs to be adjusted if Össur is a participant in the second phase.

6. CONTACT INFORMATION

Össur's contact is:

Thomas Beckers

Vice President of Corporate Development

Mobile: +354 664 1211

E-mail: tbeckers@ossur.com

Information on external advisors will be provided if and when we are given the chance to participate in the second phase of the acquisition process.

7. OTHER

This letter is solely an indication of interest and does not constitute a binding offer or commitment on our part to submit a final offer at any future time and is not intended to have any legal effect.

We have been following the evolution of Freedom Innovations for many years and are looking forward to exploring the exciting opportunity to combine Freedom Innovations and Össur. We have both external and internal resources ready for an expeditious process.

Yours sincerely,
on behalf of Össur hf.



Jon Sigurdsson
Chief Executive Officer



Moelis & Company
399 Park Avenue, 5th Floor
New York, New York 10022

Attn.:
Jon Hammack (jon.hammack@moelis.com)
Mark Webber (mark.webber@moelis.com)

Reykjavík, August 31, 2017

Re: Project Roosevelt – Ossur Proposal

Dear Sirs,

We refer to your process letter dated August 1, 2017 (the “Process Letter”), inviting Össur to submit a final proposal (“Proposal”) for the acquisition of Freedom Innovations (the “Company”). Below is information on our Proposal.

1. CONTACT

Össur is a global leader in the non-invasive orthopaedics market, within the fields of bracing and supports and prosthetics. Össur is headquartered in Reykjavik, Iceland, and has over 2800 employees in over 20 countries across the Americas, Australia, Europe and Asia.

Össur is publicly listed on NASDAQ in Copenhagen. For further information on the Össur business, ownership structure and key subsidiaries, please refer to our website, www.ossur.com.

Össur has engaged Deloitte and Proskauer for its financial and legal diligence. Please make any requests to contact Össur’s advisors through the Össur contact below:

Thomas Beckers
Vice President of Corporate Development
Mobile: +354 664 1211
E-mail: tbeckers@ossur.com

Össur’s management team and advisors are available to discuss the terms of this Proposal. In accordance with our discussions with the Moelis team, we would expect to enter an exclusivity agreement for the final phase of negotiations. This Proposal expires September 30, 2017, though with full cooperation from the Company Össur believes the parties should be able to close within two weeks.



2. VALUATION

Our Proposal is for 100% of the issued and outstanding share capital of the Company:



Our valuation assumes a reverse triangular merger of a new Össur merger subsidiary into FIH Group Holdings, LLC which will be the surviving company. The valuation also assumes the ability to complete a post-closing 338 tax election and seller agreement to a reasonable purchase price allocation. The valuation also assumes agreement regarding reasonable net working capital adjustment calculations when that information is provided by the Company to Össur.

3. FINANCING

Consideration will be in the form of cash. Össur currently has access to sufficient funding to fund the acquisition. Össur has initiated discussions with its lenders regarding the acquisition and received assurances that lenders will move quickly to facilitate consummating the transaction within 2 weeks.

4. MANAGEMENT

At this time Össur has not finalized detailed plans regarding management and key employees since Össur has not had access to contracts nor employees. However, Össur notes that the valuation assumes a 100% equity ownership and full integration of the Company into Össur. Össur will offer terms of continued and/or transition services from key management for to-be-agreed periods from the closing of the acquisition. Össur would like to close agreements with selected managers before closing.

5. DILIGENCE

Össur's due diligence is largely completed with some requests remaining outstanding or promised to be provided in the next process phase. With full cooperation from the Company, Össur anticipates completing final confirmatory diligence quickly and no later than two weeks from acceptance of this Proposal.

6. APPROVALS AND CONDITIONS

Össur's Proposal is subject to completion of final confirmatory due diligence and final definitive documentation. Össur has received board approval to submit this Proposal and to consummate the transaction on consistent terms.

7. AGREEMENT

Össur has provided a mark-up of the proposed agreement concurrently herewith. Össur sought to provide sellers with flexibility in order to allow sellers to identify the more attractive transaction structure. Should representation and warranty insurance be undesirable for any reason, Össur has proposed an indemnity package which would be acceptable to Össur. In order to provide a quick and streamlined path to closing, we have proposed a simultaneous signing and closing as opposed to signing an agreement providing for a waiting period and a deferred closing. Össur is committed to submitting an attractive proposal and welcomes the opportunity to better understand the seller's preferences.



8. OTHER

This Proposal is solely an indication of interest and does not constitute a binding commitment on our part to enter into a definitive agreement for a transaction and is not intended to have any legal effect. Össur understands the Company's financial circumstances and lending timeline and is committed and prepared to close quickly and cooperate with the Company's efforts to manage lender requirements.

Yours sincerely,
on behalf of Össur hf

A handwritten signature in black ink, appearing to be "Jón Einarsson", written in a cursive style.

Chief Executive Officer

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FEDERAL TRADE COMMISSION

OTTOBOCK HEALTHCARE,)
a corporation,)
and) File No. 171-0231
FREEDOM INNOVATIONS,)
a corporation.)
_____)

Wednesday, December 6, 2017

Ossur Americas
27051 Towne Centre Drive
Foothill Ranch, CA 92610

The above-entitled matter came on for
investigational hearing, pursuant to notice, at
11:02 a.m.

DeRoy

Ottobock Healthcare and Freedom Innovations

12/6/2017

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 LYNDA LAO, ESQUIRE

5 (Present via speakerphone)

6 Federal Trade Commission

7 400 7th Street, S.W.

8 Washington, D.C. 20024

9 (202) 326-3054

10 llaol@ftc.gov

11

12 ON BEHALF OF OSSUR AMERICAS AND THE WITNESS:

13 ALEX COFFIN, ESQUIRE

14 Senior Corporate Counsel

15 Ossur Americas

16 27051 Towne Centre Drive, Suite 100

17 Foothill Ranch, California 92610

18 (949) 382-3771

19 acoffin@ossur.com

20

21

22

23 (Appearances continued on following page.)

24

25

DeRoy

Ottobock Healthcare and Freedom Innovations

12/6/2017

1 APPEARANCES (CONTINUED):

2

3 ON BEHALF OF OSSUR AMERICAS AND THE WITNESS:

4 AMANDA P. REEVES, ESQUIRE

5 (Present via speakerphone)

6 Latham & Watkins

7 555 Eleventh Street, N.W.

8 Suite 1000

9 Washington, D.C. 20004

10 amanda.reeves@lw.com

11

12 ALSO PRESENT:

13 Roy Levy, Ph.D., FTC Economist

14 (Present via speakerphone)

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DeRoy
Ottobock Healthcare and Freedom Innovations

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I N D E X

WITNESS:

PAGE:

KIM PETER VIVIANE DE ROY

By Ms. Lao

5

By Ms. Reeves

71

(No exhibits marked.)

DeRoy

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1 Thereupon,
2 Kim Peter Viviane De Roy,
3 was called for examination and, after having been sworn
4 by the Certified Shorthand Reporter, was examined and
5 testified as follows:

6 MS. LAO: Are we on the record?

7 THE REPORTER: Yes.

8 EXAMINATION BY COUNSEL FOR THE FTC

9 BY MS. LAO:

10 Q. Please state your full name for the record.

11 A. Kim Peter Viviane De Roy.

12 Q. Mr. De Roy, who is your current employer?

13 A. Ossur HF.

14 Q. What is your current position there?

15 A. I'm the executive vice president of research
16 and development.

17 Q. Are you employed by anyone else at this time?

18 A. No.

19 Q. Thank you, Mr. De Roy.

20 My name is Lynda Lao, and I am an attorney
21 representing the Federal Trade Commission. I am going
22 to ask you some questions today about your job at
23 Ossur HF and Ottobock Healthcare North America, Inc.'s
24 acquisition of FIH Group Holdings, LLC.

25 Unless I state otherwise, I will refer to

DeRoy

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1 Ottobock Healthcare North America, Inc., as "Ottobock."
2 During the hearing I will refer to FIH Group Holdings,
3 LLC, as "Freedom Innovations" or "Freedom."

4 When I refer to the transaction or acquisition,
5 I'm referring to Ottobock's acquisition of Freedom
6 Innovations, and when I refer to Ossur HF, I will use
7 the term "Ossur."

8 Do you understand that you are here today
9 pursuant to a subpoena from the Federal Trade
10 Commission?

11 A. Yes.

12 Q. Have you ever been deposed or otherwise given
13 testimony?

14 A. I have not.

15 Q. Well, I'd like to briefly explain how this
16 hearing will be conducted.

17 All of my questions and your answers will be
18 recorded by our court reporter. Please answer my
19 questions orally so that the court reporter can record
20 your answers. She won't be able to record a nod or
21 shake of your head.

22 To make the questions and answers easier to
23 record, let's try to do our best not to speak at the
24 same time. So I'll try and wait until you finish
25 answering a question before I begin my next question,

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 and likewise, I ask that you wait until I finish asking
2 my question before you begin your answer.

3 If you do not understand one of my questions or
4 you cannot hear a question, I'd be happy to clarify it,
5 rephrase it, or do whatever is necessary so that you and
6 I understand one another.

7 And I'd like to remind you that you're under
8 oath. If at any point you realize that you've answered
9 a question incorrectly or you remember something else
10 that would make your answer more complete, please let me
11 know, and I'll give you the opportunity to add to your
12 earlier answer while it's on your mind.

13 If you need a break at any point, just let me
14 know, and we can take one. My only request is that you
15 not request a break while a question is pending. We're
16 hoping to take a break approximately halfway through,
17 just so that you can take a little bit of time before we
18 go into the next session.

19 Do you understand everything that I've told
20 you?

21 A. Yes.

22 Q. Mr. De Roy, is there any reason why you would
23 not be able to testify fully and accurately today?

24 A. Nope.

25 Q. Do you understand that Ossur received a

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 Schedule A subpoena for testimony from the FTC?

2 A. Yes.

3 Q. And do you understand that you are the person
4 that Ossur has designated to testify on behalf of the
5 company regarding the matters identified in the
6 subpoena?

7 A. I do.

8 Q. Specifications 1 through 3 include the relevant
9 products currently being sold by Ossur, information
10 about relevant K-levels, marketing, design, pricing,
11 third-party reimbursement, sales, and differences
12 between the company's products and competing products;
13 and "relevant products" are defined to include
14 microprocessor knees.

15 Are you prepared to provide testimony on behalf
16 of Ossur for specifications 1 through 3?

17 A. Yes.

18 Q. Specifications 4 through 5 include Ossur's
19 relationship with distributors and top customers, the
20 role of sales representatives, as well as contract
21 negotiations with customers.

22 Are you prepared to provide testimony on behalf
23 of Ossur for specifications 4 through 5?

24 A. Yes.

25 Q. Specification 6 includes requirements for entry

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 into the sale or provision of relevant products in the
2 United States.

3 Are you prepared to provide testimony on behalf
4 of Ossur for specification 6?

5 A. Yes.

6 Q. And finally, specifications 7 through 8 include
7 the acquisition of Freedom by Ottobock, as well as the
8 sale of Freedom Innovations, including any due diligence
9 and evaluations made by Ossur related to a potential
10 acquisition of Freedom.

11 Are you prepared to provide testimony on behalf
12 of Ossur for specifications 7 through 8?

13 A. Yes.

14 Q. I'd like to start by reviewing your personal
15 background.

16 Mr. De Roy, do you have a college degree?

17 A. I do.

18 Q. Where did you attend college?

19 A. Belgium.

20 Q. Which institution?

21 A. The Catholic University of Leuven.

22 Q. And what year did you graduate?

23 A. I graduated '99 and then again in 2002. Sorry.
24 2001.

25 Q. What degree did you earn or degrees?

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 A. I have a master's degree in physical
2 rehabilitation and physical therapy and a bachelor
3 degree in prosthetics and orthotics, as well as a
4 master's degree in education related to physical
5 rehabilitation and physical therapy.

6 Q. How long have you worked at Ossur?

7 A. For the last 15 years. Since 2002.

8 Q. How long have you been in your current position
9 as EVP for Research and Development?

10 A. For the last three weeks.

11 Q. Have you held any other positions within Ossur?

12 A. Yes.

13 Q. Would you please outline those other positions.

14 A. So before this position, I was responsible for
15 the Americas prosthetics business unit as well as for
16 global marketing prosthetics, and prior to that, I held
17 several different roles within marketing and sales in
18 the European markets and started at Ossur in a R&D
19 position as a project manager and global product
20 manager.

21 Q. Where did you work immediately prior to joining
22 Ossur?

23 A. I worked for a company called RSscan
24 International that operates out of Belgium.

25 Q. How long did you hold that position?

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 A. For three years.

2 Q. Was that also related to sales and marketing?

3 A. It was a combination of sales and marketing.

4 There was some research and development as well.

5 Q. Do you have any other work experiences?

6 A. I worked as a physical therapist in private
7 cabinets during the same time as I was employed at
8 RSscan International.

9 Q. So it sounds like you've spent nearly your
10 entire career working within the prosthetics business in
11 a wide variety of roles?

12 A. That's correct.

13 Q. I'd like to talk about your current position
14 within Ossur.

15 What are your current responsibilities as EVP
16 of R&D?

17 A. So I head up the research and development
18 department for prosthetics and bracing which means that
19 I am in charge of delivery of the product pipeline, in
20 charge of the innovation that Ossur brings to market,
21 and managing that pipeline in line with the clinical
22 needs of the patients we are servicing, as well as in
23 line with the opportunities for the company to continue
24 to grow and expand.

25 Q. Does your position include oversight of

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 innovation and pipeline products within microprocessor
2 knees?

3 A. It does.

4 Q. How many people currently report to you?

5 A. Oh, I should know this. I would say --
6 directly report to me or?

7 Q. I guess how many people do you have oversight
8 over?

9 A. Yeah. It's probably in the range of 150.

10 Q. Who do you report to?

11 A. I report to the CEO and president of the
12 company.

13 Q. Is there anyone else that you currently work
14 with regularly within Ossur?

15 A. Could you specify that? You mean other
16 departments or?

17 Q. Other divisions or other specific heads of
18 divisions.

19 A. Yes. Well, I work cross-departmental with
20 sales and marketing, with M&O. I think that's the main,
21 the main focus, and then to a lesser extent more to run
22 the overall R&D department according to budgets with the
23 finance department as well.

24 Q. You mentioned M&O. What does that stand for?

25 A. Manufacturing and operations.

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 Q. Do you hold any other role within Ossur; for
2 instance, are you part of any committees?

3 A. Not specifically. We have work groups and
4 committees around some of the internal strategic
5 projects and programs that we run, but I'm not sure if
6 you're referring to those.

7 Q. You also mentioned that you were recently the
8 vice president of business unit prosthetics for the
9 Americas.

10 What were your responsibilities in that role?

11 A. Primary responsibility was to direct the sales
12 force to bring products to market in the best way
13 possible to support the growth objectives and the goals
14 of the company on the prosthetic side of the business.

15 Q. Did you have responsibility for research and
16 development or for product development?

17 A. Not at that time.

18 Q. Any responsibility related to pricing of
19 prosthetics?

20 A. I did more as my position of V.P. of global
21 marketing prosthetics which I held at the same time.

22 Q. So based on this experience, you had direct
23 experience with the U.S. market for lower limb
24 prosthetics for several years; is that correct?

25 A. Correct.

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 Q. And that experience includes microprocessor
2 knee sales within the United States for Ossur?

3 A. Correct.

4 Q. Could you please briefly describe Ossur's
5 business within the U.S..

6 A. Could you be more specific as to what part of
7 the business? You mean in particular prosthetics or in
8 general?

9 Q. More generally, could you give us a brief
10 overview of the various types of businesses that Ossur
11 has in the United States.

12 A. Okay.

13 Q. You mentioned prosthetics and bracing. What
14 does that mean?

15 A. So we have --

16 MS. REEVES: Objection. Compound.

17 You're free to answer the question. Just if
18 you don't understand what she's asking, just feel free
19 to clarify.

20 THE WITNESS: Okay. So there's two parts to the
21 business which is, one is prosthetics which I was
22 responsible for. The other part is the bracing and
23 supports part of the business.

24 Both of those are managed out of the Foothill
25 Ranch office here in California, where you have the

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Ottobock Healthcare and Freedom Innovations

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1 supporting structure with finance, academy, marketing;
2 and spread around the country we have distribution
3 centers as well as several sites for manufacturing of
4 mostly prosthetic components in the United States.

5 BY MS. LAO:

6 Q. What types of prosthetic components does Ossur
7 sell in the United States?

8 A. Sorry. What type do we sell in the United
9 States?

10 Q. Yes.

11 A. Yes. So we sell our entire range of products.
12 So that includes prosthetic feet, prosthetic liners,
13 prosthetic knees, the componentry that puts it all
14 together, and including also the prosthetic sockets that
15 are custom-built for patients.

16 Q. In broad strokes, who are Ossur's major
17 customers in the United States?

18 A. You can split up the market into the
19 independent customer base which is a large group of
20 independently owned O&P facilities. So the O&P clinics,
21 orthotics and prosthetics clinics, are our major
22 customer group.

23 And then there is a large group, which is the
24 biggest customer, if you will, is the Hanger
25 organization which is the largest group in the United

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 States, which is the only publicly owned group.

2 Q. Approximately how many offices does Ossur
3 operate in the United States?

4 A. I'd say ballpark of ten.

5 Q. Where is Ossur headquartered?

6 A. Headquarters is in Iceland, in Reykjavik.

7 Q. Why does Ossur have a number of offices
8 throughout the United States?

9 A. Like I said, some of them are related to
10 manufacturing and operations, distribution centers. We
11 have certain centers that are sales- and
12 marketing-oriented. We have an academy site where
13 customer education is being done.

14 I think that sums it up.

15 Q. Is it helpful to Ossur to have a U.S. presence
16 for sales to U.S. O&P clinics?

17 A. Yes.

18 Q. Approximately how many employees does Ossur
19 have within the United States?

20 A. I'd say in the range of 400.

21 Q. Does Ossur have sales representatives within
22 the U.S. as well?

23 A. Yes.

24 Q. Approximately how many?

25 A. Combined prosthetics and bracing, we're looking

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 at probably about 150.

2 Q. Are they located throughout the U.S. or in a
3 specific location?

4 A. Throughout the United States.

5 Q. Would you please describe the role that sales
6 representatives play in the sale of prosthetics within
7 the United States.

8 A. So the salesperson is responsible for the
9 detailing of our products to the O&P customer, building
10 up customer relation, maintaining customer relation.
11 They have an important role in service provision to
12 customers, and part of the sales force has a very clear
13 role in continued education on our products to those
14 customers as well.

15 Q. Do sales representatives from Ossur ever assist
16 with patient fittings?

17 A. Yes.

18 Q. Do Ossur sales representatives also provide
19 assistance with reimbursement?

20 A. To some extent, depending on the difficulty of
21 the case. We have specialized service for that which is
22 outside of the sales force.

23 Q. I understand.

24 Are there any other types of services that we
25 have not discussed that Ossur provides for its clinic

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 customers within the United States?

2 A. There's a bunch of services, but I think the
3 essence of it is pretty much captured in the
4 responsibility of the sales and then the education part,
5 as well as the reimbursement part which is kind of
6 separate as well.

7 Q. Does having sales representatives within the
8 United States benefit Ossur when it's making sales to
9 U.S. customers?

10 A. Sorry. Could you repeat that?

11 Q. Yes. Does having sales representatives within
12 the United States benefit Ossur when it is making sales
13 to U.S. customers?

14 A. Yes.

15 Q. Does Ossur use any distributors in the United
16 States to sell lower limb prosthetics?

17 A. Yes.

18 Q. Which distributors are the largest ones that
19 Ossur uses?

20 A. There's two. One is Cascade, and the other one
21 is SPS.

22 Q. Do you have a sense as to what portion of the
23 U.S. revenue for Ossur is sold through distributors
24 versus sold directly to customers?

25 A. I would say it's in the range of -- we're

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 talking prosthetics specifically?

2 Q. Yes.

3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8 A. Correct.

9 Q. Why does Ossur choose to use distributors for a
10 portion of its sales in the U.S.?

11 A. We primarily choose to work with distributors
12 to address a certain part of our customer base. The
13 customer base for us is split up into customers that are
14 larger in kind that we typically do more internal
15 service in terms of education. We run programs with
16 them. Whereas the smaller customers are typically
17 serviced by distribution. That's one part of it.

18 And then also distribution is focusing on a
19 part of our product line that is considered to be
20 somewhat more mainstream, considered to be generally
21 well known in terms of how to utilize it on patients.

22 So if there's less need for that education and
23 service that our direct sales force and our academy
24 support provides, then the distribution partners are a
25 good choice.

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1 Q. Roughly, what was Ossur's revenue in 2017
2 globally?

3 A. Sorry. Global prosthetics revenue for 2017?

4 Q. Yes.

5

6

7 Q. Roughly, what do you expect Ossur's total sales
8 for microprocessor knees to be at the end of 2017?

9

10

11 Q. Approximately how many units of microprocessor
12 knees did Ossur sell in 2017?

13

14

15 Q. I'd like to talk about prosthetic knees more
16 generally and then focus on the microprocessor knees
17 more specifically.

18

19

In general, what types of patients might find
themselves needing lower limb prosthetics?

20

21

22

A. I would say that -- it's clearly amputees,
obviously, but within amputation there's several reasons
for amputation.

23

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The vast majority of our users are amputees due
to the result of diabetic issues or vascular issues.
That's the larger group. And then there's a group of

DeRoy

Ottobock Healthcare and Freedom Innovations

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1 trauma patients and a group of congenital as well as a
2 group of cancer-related amputations. I think those four
3 are the largest categories within amputees.

4 Q. What is the typical age profile of an amputee
5 or someone who might have a congenital defect?

6 A. Well, congenital obviously could be from zero
7 through to 70, 80, as long as they live.

8 Taking the trauma population, it will typically
9 be a younger part of the population.

10 When it comes to vascular or diabetic, we're
11 talking about an average age ranging from 60 to 70 years
12 of age in the United States.

13 Q. So it sounds like there's a vast variety of
14 patients who might find themselves in need of a
15 prosthetic; is that correct?

16 A. That's correct.

17 Q. Focusing more specifically on prosthetic knees,
18 could you give us a sense of what the process is like
19 for fitting a prosthetic knee?

20 A. Yes. So a prosthetic knee will be fit at the
21 time where the prosthetist, who is the provider, will
22 have developed or designed a socket, which is the
23 interface between the limb and the prosthetic.

24 So once that is done, they will, based upon the
25 patient's profile, desire for and motivation for

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1 activity, they will try to identify the appropriate
2 prosthetic knee device, and fitting will either be done
3 by the prosthetist or will be done in cooperation
4 between the prosthetist and the academy person from
5 Ossur where then it's about fitting the device, meaning
6 connecting it physically to the socket, making sure that
7 it aligns well so that the function is as anatomical and
8 functional as possible.

9 Completing that with a prosthetic foot and the
10 componentry that holds it all together will allow the
11 patient to take first steps with the device, usually in
12 between parallel bars to get used to the device, and
13 then gradually increasing the activity as they get more
14 comfortable in the device.

15 Q. How long does the process of fitting a knee
16 take?

17 A. It's very dependent on the type of user we
18 have. If the patient is in the more elderly category,
19 it's likely to take longer than if they're younger.

20 But I think it's fair to say that we're talking
21 about several hours, and in potential cases we would be
22 talking about several days before they actually gain the
23 level of confidence to put weight on the device and at
24 the same time also move away from the parallel bars.

25 So it's difficult to put a number of hours on

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1 it because it's very patient-specific, and when does the
2 patient graduate or when is the fitting over? I mean,
3 this is something that usually goes over multiple days.

4 Q. What is the prosthetist's goal when fitting a
5 knee for a patient?

6 A. I would say the goal is to try to reestablish,
7 as close as possible, the activity level of the patient
8 as it was prior to the amputation or in some cases even
9 prior to the time before the amputation where the
10 patient might have already had significant comorbidities
11 and limitations in terms of walking ability.

12 But returning to the best possible functional
13 level, I would say, is the overall goal of the
14 prosthetist, establishing the best possible clinical
15 outcome.

16 Q. Are you familiar with CMS's K-level
17 classifications for lower limb prosthetics?

18 A. Yes.

19 Q. What are they?

20 A. So there's the K0, K1. K0 basically is
21 patients that are considered to be non-ambulatory
22 patients. They will typically end up in a wheelchair.

23 K1 patients that will typically -- or could
24 possibly receive a prosthesis might be for cosmetic
25 reasons. Could be for a limited amount of time of

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1 actually standing.

2 The K2 patients are patients that are able to
3 walk, typically in a more controlled environment inside
4 of their house, maybe somewhat outside of their house.

5 K3 patients are the ones that have further
6 ambulatory capabilities which includes typically walking
7 at variable cadence as well. So speeding up, slowing
8 down, and would include, for instance, the ability to
9 descend stairs, descend inclines.

10 And then the K4 patients are typically those
11 that are at the highest level of activity that might
12 include heavy-duty type utilization at work but, at the
13 same time, heavy-duty utilization recreationally as
14 well.

15 Q. For what K-levels is it most likely that a
16 patient will receive a microprocessor knee?

17 A. It's most likely in the K3 and K4 level.

18 Q. I'd like to talk briefly about reimbursement.

19 It's my understanding that prosthetic clinics
20 buy prosthetic knees from manufacturers like Ossur; is
21 that correct?

22 A. That's right.

23 Q. Ossur has list prices for its products; is that
24 correct?

25 A. List prices? Yes.

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1 Q. Does Ossur also offer any form of discounts or
2 rebates to its customers?

3 A. Yes.

4 Q. It's also my understanding that prosthetic
5 clinics are reimbursed for prosthetic knees by
6 third-party insurance payers; is that correct?

7 A. That is correct.

8 Q. Are you familiar with the term "L-Code"?

9 A. Yes.

10 Q. What is an L-Code?

11 A. An L-Code is a descriptor of a device or a
12 subsegment of the prosthetic device -- in this case it
13 could be another device as well -- that then defines the
14 level of reimbursement that is associated with the
15 application of that device for the appropriate patient.

16 Q. So the insurance reimbursement amount varies
17 between different L-Codes; is that correct?

18 A. That is correct.

19 Q. Do both private insurers and CMS use the L-Code
20 guidelines for reimbursement?

21 A. Yes.

22 Q. What types of payers offer reimbursement for
23 microprocessor knees?

24 A. Medicare. We have the big five: The Aetna,
25 the Cigna, the UnitedHealthcare, Kaiser. Those are the

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1 independent payers. They also support microprocessor
2 knee technology. I think that's from an insurance
3 perspective or payer perspective.

4 And then there's the V.A. and DOD support
5 microprocessor technology as well.

6 Q. Do you know what portion of Ossur's prosthetic
7 knee fittings are reimbursed by each of those payers?

8 A. We have a vague idea, but I wouldn't consider
9 it accurate knowledge.

10 Q. I understand.

11 Are you aware of whether Medicare's
12 reimbursement rate for prosthetic knees are set on a
13 nationwide basis?

14 A. They actually vary between states.

15 Q. Is it a significant variance, or are they
16 generally within a similar range?

17 A. Define "significant." I think generally it's
18 fair to say that they're in the same range.

19 Q. Do you know how much payers are reimbursed --
20 I'm sorry.

21 Do you know how much the reimbursement amount
22 is for a microprocessor knee fitting? And the range is
23 helpful.

24 A. Yes. I would say probably between 25- and
25 \$30,000.

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1 Q. Does that reimbursement amount cover the cost
2 of overhead, labor, et cetera, in addition to the actual
3 prosthetic knee itself?

4 A. It should. That's the intention of the codes
5 and the level of reimbursement.

6 Q. How does the microprocessor knee reimbursement
7 level compare to the reimbursement level for a
8 mechanical knee?

9 A. It's higher. Let's say --

10 Q. Approximately --

11 A. Yeah, let me specify. It's higher in dollar
12 amounts. If you look at proportionally in percentages,
13 it's actually lower.

14 Q. What do you mean by that?

15 A. That a much lower priced mechanical knee will
16 have a markup that, in comparison to that much lower
17 price, is going to be probably in the range of 60, 70,
18 maybe even 80 percent, whereas if you have the
19 microprocessor knee, the markup there is in the range of
20 30 to 40 percent.

21 Q. But in absolute terms --

22 A. In absolute dollars -- sorry. Go ahead.

23 Q. So in absolute terms, the amount of
24 reimbursement for a microprocessor knee fitting is
25 higher than that for a mechanical knee fitting, correct?

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1 A. Correct.

2 Q. Do you know what the price range is for a
3 mechanical knee reimbursement, approximately?

4 A. It's tough to put one number on it because the
5 range of mechanical knees goes from very simple,
6 single-axis type designs all the way to way more complex
7 hydraulic-type designs.

8 So I would say it would probably range from the
9 1500 to \$2,000 range for the lowest end of the range to
10 up to 7,000, yeah, 5- to \$7,000 on the higher end of the
11 range.

12 Q. Does the fixed reimbursement rate prevent Ossur
13 from offering pricing discounts and rebates?

14 A. Does it prevent us? No.

15 Q. Do clinics care about the prices that they are
16 paying to acquire microprocessor knees --

17 A. Yes.

18 Q. -- even though the reimbursement rates are
19 fixed?

20 A. Yes, they do.

21 Q. Does Ossur consider reimbursement rates when
22 it's setting its prices of its microprocessor knees?

23 A. To an extent we do. That is, within the code
24 description that the microprocessor knee that we have
25 that matches the code description, that one is

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1 definitely priced in line with the reimbursement level.

2 But then we have microprocessor-controlled
3 knees that are actually more functional, that adds
4 functionality that is not captured within the code, and
5 those are priced above the level of reimbursement even
6 of the typical microprocessor.

7 Q. So Ossur sells microprocessor knees in the
8 United States; is that correct?

9 A. Yes.

10 Q. I think there's a term that's used on your
11 website and in some of Ossur's materials that's "bionic
12 prosthetic knees"?

13 A. Correct.

14 Q. Are bionic prosthetic knees the same as
15 microprocessor knees?

16 A. To an extent, yes. I mean, we have two types
17 of bionic knees. One is the microprocessor-controlled
18 one. The other one is the Power Knee, but the Power
19 Knee is also microprocessor-controlled. It just adds in
20 the function of power.

21 So I think you could say that all bionic knees
22 are, in fact, microprocessor-controlled.

23 Q. We have talked a little bit about mechanical
24 knees.

25 How would you describe a mechanical knee as

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1 compared to a microprocessor knee?

2 A. So, again, it's very difficult to just pick one
3 mechanical knee, but the concept of a mechanical knee is
4 basically that you're counting on a combination of
5 hinges or a single hinge combined with control
6 mechanisms -- that could be a friction brake to
7 pneumatic components to hydraulic components that are
8 added in -- to provide the level of functionality
9 depending on the need of the patient.

10 A microprocessor knee, within that segment
11 there are several types of microprocessor knees that
12 are, in a way, best split up in three categories where
13 one is the microprocessor knee that is based on
14 hydraulic technology. That one is utilizing the same
15 hydraulic technology as you will find in a mechanical
16 knee, but it's adding on a microprocessor that controls
17 the opening and the closing of the valve within the
18 system and, with that, allows for adjustment on walking
19 speeds and allows for adjustments on the right level of
20 friction and resistance when a patient wants to walk
21 down the stairs or down an incline.

22 The second category of microprocessor knees is
23 the ones based on magnetorheologic technology. That's,
24 in fact, our Rheo Knee, the only knee that is made based
25 on that technology; and that knee, in particular, is

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1 working with creation of a magnetic field to allow for
2 the most fluid-type motion when walking, at the same
3 time providing the safety characteristics and the
4 resistance required, the support required when walking
5 down stairs and down inclines.

6 And then the last group of
7 microprocessor-controlled knees is the group that
8 combines hydraulics and pneumatic. So basically
9 utilizing the hydraulics for everything that has to do
10 with stance control and utilizing the pneumatics to
11 accelerate the knee during swing phase to make sure that
12 when the knee is in pendulum, that the leg comes forward
13 fast enough to make sure that it's in a stable position
14 before the patient engages in weight bearing.

15 So within those three segments, Ossur is in
16 that middle segment, and this is where our positioning
17 of our product, based upon the technology that we use,
18 is, in a way, fairly specific to a user group of
19 patients that is looking for the smoothest type of gait,
20 the least energy-consuming gait, at the same time
21 basically unrestricted motion in both level-ground
22 walking as well as walking around in their house.

23 And that really is the differentiating factor
24 between the magnetorheologic technology-based knee and
25 the hydraulics-based knee which is where you would find

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1 competitive products, such as the C-Leg from Ottobock,
2 the Plie, for instance, from Freedom.

3 And in the last category you would have the
4 combination with hydraulics and pneumatics. That's
5 where you'll find the products such as the Nabtesco
6 knee, for instance.

7 Q. You mentioned the term "stance phase." What
8 does that mean?

9 A. So stance phase is the period of time where the
10 patient is actually loading the prosthetic leg versus
11 swing phase which is the period of time where your leg
12 is actually up in the air, moving forward to take the
13 next step.

14 Q. What distinguishes a microprocessor knee from a
15 mechanical knee?

16 A. I would say that it -- distinguishes in terms
17 of technology, obviously the fact that there is a
18 computer-controlled mechanism that is put on top of a
19 mechanical mechanism that allows to control the knee --
20 to basically monitor the activity the patient is doing,
21 to then adjust the setting of the knee in realtime to
22 best match the activity of the patient.

23 Meaning if they're walking very slowly, the
24 knee will move slowly. They speed up, the knee will
25 accelerate. They walk down stairs, the knee knows that

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1 it is walking down stairs, and it will adjust the
2 resistance accordingly such that the patient is allowed
3 to yield the knee and go down in a very controlled
4 manner. Same thing on an incline or a decline.

5 So the technology is an addition of a
6 microprocessor that includes algorithms that are based
7 on the typical biomechanics of gait, that includes
8 sensors that basically capture the activity of the
9 patient, that measures the speed of walking, that
10 measures whether the patient is in stance phase or
11 whether he's in swing phase; and then they basically
12 steer the actuator, which is the moving parts, to make
13 sure that you get the right amount of resistance or
14 freedom of motion in line with the type of activity the
15 patient is performing.

16 Q. Is it fair to say that a microprocessor knee is
17 more sophisticated than a mechanical knee?

18 A. Yes.

19 Q. What are the benefits of the microprocessor
20 knee?

21 A. So for a patient utilizing a microprocessor
22 knee -- and I'll refer back to basically statements and
23 testimonials that we get from patients -- they will
24 generally comment that they feel safer, and they feel
25 that they are less cognitively engaged or less

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1 cognitively involved in their prosthetic while walking.

2 And that is basically because of the fact that
3 the microprocessor is helping them control their step
4 and their prosthesis throughout. The microprocessor is
5 going to react if the patient puts their foot down
6 unexpectedly. If they're tripping or if they're
7 stumbling, the prosthesis is going to help them, whereas
8 a passive mechanical device is not going to have that
9 reaction, and the chances of the patient falling are
10 much higher.

11 So for the patient the big benefit is that they
12 have a feeling of safety and a reduced cognitive
13 involvement in their prosthesis whilst they're
14 performing their daily activities.

15 And then along with that, there's the advantage
16 of the prosthesis being able to adjust itself realtime
17 to the activity the patient is in, so that makes it
18 easier for the patient to change between activities,
19 change walking speeds. That's when the prosthesis
20 actually will follow automatically, whereas with the
21 mechanical knee, the patient will have to be the one to
22 kick the prosthesis forward faster, utilize their stump
23 strength, their body strength, to basically manipulate
24 the position of the prosthesis in line with the activity
25 they're performing.

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1 Q. So in sum, is it fair to say that the
2 advantages of a microprocessor knee over a mechanical
3 knee include better safety and functionality, a lower
4 likelihood of falls, greater mobility?

5 A. I think you summarized that well.

6 Q. Thank you.

7 Are you aware of any studies that show the
8 benefits of microprocessor knees over mechanical knees?

9 A. Yes.

10 Q. Do you mind briefly describing those?

11 A. Yes. So the vast majority of these studies are
12 intended to prove the benefits of the
13 microprocessor-controlled knee over mechanical knees
14 with the intent to persuade payers to actually allow for
15 the application of a microprocessor knee over a
16 mechanical knee in the case that they're found to
17 require that to perform their day-to-day activity.

18 So those studies will basically look at
19 everything you just summarized. They will look at the
20 reduced risk of falls. They will look at the improved
21 functionality, improved mobility.

22 They actually have investigated the cognitive
23 involvement as well of the patient while walking. They
24 have looked into energy consumption of the patient that
25 has found to be favorable for microprocessor knees over

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1 mechanical knees.

2 And then there's some studies, relatively
3 limited still, that have investigated microprocessor
4 knees amongst themselves. So comparing the C-Leg to the
5 Rheo Knee. I think those are the two products that have
6 been compared the most. I'm actually not very familiar
7 with any studies of any of the other microprocessor
8 knees out there. So this is the studies that have
9 been -- or the two products that have been in the market
10 the longest that I believe also have the biggest part of
11 the users on them.

12 And one study in specific, actually, out of the
13 University of Munster was dictated by the reimbursement
14 system, the healthcare system in Germany, with the clear
15 intention to differentiate the functionality of a C-Leg
16 versus a Rheo Knee versus mechanical knees.

17 And out of that study it became apparent that
18 the Rheo Knee was defined to be -- or found to be more
19 relevant for a specific group of the higher active part
20 of the patient population, and we related that back to
21 the fact that the magnetorheologic fluids or the
22 magnetorheologic technology that is used in the knee
23 just simply allows for a more -- a higher level of
24 freedom of motion.

25 For those patients, the knee adjusted better to

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1 their needs and is able to keep up better with the
2 higher active population versus the C-Leg, or the
3 hydraulic unit, that was basically found to be a little
4 bit limited in terms of the drag that the hydraulics
5 provide and the ability of the knee to respond fast
6 enough for the users that are functioning at a higher
7 frequency.

8 So that was one of the studies that I think was
9 really helpful for us or actually instrumental for us to
10 gain reimbursement in the French market where the whole
11 system is set up and dependent on being able to prove,
12 versus a product that's already on the reimbursement
13 list, which in this case was the C-Leg, we had to prove
14 that our device was sufficiently different from the
15 product already there on the reimbursement list to be
16 able to gain reimbursement.

17 And this study was truly instrumental to prove
18 that the Rheo Knee was developed and did have benefits
19 for that specific part of the population, the needs of
20 the population of amputees, and was, therefore, accepted
21 on the reimbursement list I believe in 2012.

22 Q. Thank you. That's very helpful.

23 As far as the price difference goes, you spoke
24 briefly about reimbursement. I'd like to talk a little
25 bit about the difference between microprocessor knee and

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1 mechanical knee prices.

2 What is the approximate price difference -- and
3 I understand there's a range --

4 A. Yeah.

5 Q. -- between microprocessor knee acquisition
6 prices and mechanical knee acquisition prices?

7 A. Okay. So if I put the microprocessor knee in
8 comparison to the mechanical alternative that would be
9 suitable for the same patient population, there we're
10 talking about mechanical products being in the range of
11 2 1/2 to 4 1/2 thousand dollars, whereas microprocessor
12 knees will vary, list price level, probably in a range
13 of 17- to \$20,000 for those considered to be the
14 mainstream and Medicare-covered microprocessor knees.

15 And then there's another segment which is above
16 which is a segment where the microprocessor knees that
17 are considered to be -- to provide functionality that is
18 outside of the scope of the L-Codes, and those are
19 priced in the range of 28,000 up to probably 34-,
20 \$35,000.

21 And then the Power Knee, which is a
22 microprocessor-controlled knee that actually includes
23 power, is described by a separate code on the
24 reimbursement level, and that price ranges around
25 \$38,000.

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1 So these are all list prices, so the
2 acquisition price of the prosthetist is the price as I
3 mentioned now.

4 Q. So in general, is it fair to say that the
5 prices of microprocessor knees are typically more
6 expensive than those for mechanical knees?

7 A. That's correct.

8 Q. Has Ossur seen any trends in microprocessor
9 knee innovation over the last few years?

10 A. Yes.

11 Q. We spoke briefly earlier about
12 magnetorheological technology versus hydraulic
13 technology.

14 A. Yes.

15 Q. And you had mentioned that the Rheo utilizes
16 the former.

17 Do you mind describing any differences in
18 functionality between the magnetorheological technology
19 versus hydraulic technology as it relates to
20 microprocessor knees?

21 A. Yes. I'll try not to be too technical about
22 it.

23 But the magnetorheologic device is basically
24 dependent on resistance created through the creation of
25 a magnetic field. So inside the knee we have a fluid

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1 which is called a magnetorheologic fluid which is
2 basically an oil that has magnetic particles in it.

3 By running a current through that, you're
4 basically aligning those particles and providing
5 resistance. That resistance is required to support the
6 patient when they're in stance phase. It's also
7 required to support the patient when they're walking
8 down stairs or walking down an incline.

9 What's really important about that technology
10 and is the reason why it was selected in the first place
11 is that because it is magnetic or magnetic-field based,
12 the big benefit is that you can actually reduce the
13 magnetic field to zero or very close to zero which means
14 that when those particles are not aligned at all, what
15 you get is a knee that is basically very fluent and is
16 using the oil more as a lubricant to provide very fluid
17 motion, flexion and extension, leg moving back and
18 forth.

19 This is found by users to be a less
20 energy-consuming product for them. It's found to be
21 quicker in response, and it's also found to be more
22 accurate in the corrections or adjustments to walking
23 speeds and allows the patient to walk around in their
24 house, for instance, when you're taking very small
25 steps. Because there's almost no resistance in the knee

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1 when you're taking those steps, the knee will still bend
2 very nicely, and it will give them a very natural
3 feeling while walking on the knee. So that's one part.

4 On the hydraulic side what you have is
5 basically a hydraulic cylinder with a valve inside which
6 basically the valve is opened or closed. When the valve
7 is opened, there is more oil flow allowed which means
8 that that's when the resistance of that knee is the
9 lowest. When the valve is complete -- or almost
10 completely closed, it means that the resistance is the
11 highest.

12 So, again, back to the stairs and the inclines.
13 When you're walking down a stairs or down an incline,
14 when the valve is then in a more closed position, the
15 resistance will be higher. The patient will be
16 supported. When the patient is walking and actually the
17 leg is in swing phase, the valve will be open, and the
18 flow of oil will be allowed throughout the cylinder.

19 A big difference is that when you allow for the
20 flow through the cylinder, there is always a residual
21 drag because you're still pushing oil from one chamber
22 to the next.

23 In layman terms what we say is it's kind of
24 like walking with your feet in the ocean where your feet
25 are below water. You have that resistant drag.

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1 I often refer to it as well that when you open
2 a door that has a hydraulic pump on it, when you pull
3 that door very, very slowly, you will have less
4 resistance. If you pull it too fast, you will feel the
5 resistance on that door.

6 When walking on a hydraulic prosthetic knee,
7 the knee struggles to keep up with faster motion because
8 it's like pulling that door faster, and it's going to
9 create drag which means that the patient feels like
10 they're waiting for the knee. If the patient waits for
11 the knee, they're going to try to compensate for that by
12 kicking the knee forward themselves and, with that,
13 expend more energy to get the knee to be in time, in
14 place, to take the next step.

15 So those are the big differentiating factors
16 from a technology perspective between the hydraulic
17 units and the magnetorheological units, and in that the
18 Rheo Knee is the only knee that uses the
19 magnetorheologic technology, so with that, separates
20 itself considerably from the rest of the field.

21 I hope that was not too techie.

22 Q. No. That was very helpful. Thank you.

23 One more quick question, and then we'd like to
24 take a quick break.

25 What happens to the magnetorheologic knee if

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1 the microprocessor or the knee itself runs out of
2 battery or the battery dies?

3 A. So in case that happens, we have a mechanical
4 lock on the knee. So the patients, depending on what
5 they prefer, the patient could actually turn on the
6 mechanical lock and walk with a stiff leg, but because
7 of the nature of the knee, when, let's say, the battery
8 runs out, there's no magnetic field created. So the
9 knee will be a very free-swinging knee. So the patient
10 could still walk with the knee flexion and extension.

11 The difference is obviously that at that time
12 the microprocessor is not there to catch them if they
13 would take a bad step. The microprocessor is not
14 arranging for adjustment to walking speed at that time,
15 either, and the knee will not be able to support the
16 patient while walking down stairs or down inclines.

17 So it depends on what the patient prefers. We
18 have had testimonials of patients that say, we truly
19 prefer the knee to remain flexible, because if not, I
20 have to walk with a limp because then I'm dragging my
21 prosthesis forward, and I'm lifting it up to avoid that
22 my toe stubs. Others say, for my safety, I prefer to
23 just turn the lock on and have the knee in full support
24 to support their activity.

25 Q. For a less experienced patient who may have

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1 forgotten to lock their knee, is it possible that they
2 could misstep and take a little fall if the battery runs
3 out?

4 A. That could be the case, but that could happen,
5 basically, in both scenarios. That could happen when
6 they have the mechanical lock on as well. Because in
7 that case, when you're moving your leg forward, because
8 it is a stiff leg, obviously the chances of you stubbing
9 your toe while progressing to the next step are higher
10 than if the leg is actually flexing.

11 But I think it's fair to say that it's likely
12 for the less experienced user to stumble, potentially
13 fall, if they continue to use the knee without battery,
14 without the support of the knee.

15 MS. LAO: Let's go off the record, please.

16 (Recess taken from 12:00 p.m. to 12:08 p.m.)

17 MS. LAO: Let's go back on the record, then, please.

18 And we're back on?

19 THE REPORTER: Yes.

20 BY MS. LAO:

21 Q. Mr. De Roy, which microprocessor knees does
22 Ossur sell in the United States today?

23 A. Sorry. Can you rephrase? There was some noise
24 on the line there. Can you rephrase, please?

25 Q. Which microprocessor knees does Ossur sell in

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1 the United States today?

2 A. Okay. So we have the Rheo Knee, we have the
3 Rheo Knee XC, and then we have the Power Knee which,
4 like I said, is a microprocessor-controlled knee.
5 However, it has a powered actuator additionally.

6 Q. Is the most current iteration of the Rheo Knee
7 the Rheo Knee 3?

8 A. Actually, our recent launch, we removed the
9 specifications of the Rheo Knee. The numbering is gone.

10 Q. When did that launch occur?

11 A. That was about two months ago.

12 Q. Did Ossur provide a new knee at that point or
13 additional features over the previous iteration of the
14 Rheo Knee?

15 A. Additional features mainly, and like with every
16 release, we just improve, fine-tune the functionality of
17 the knee further.

18 Q. How does Ossur position each of these three
19 knees in the market with respect to specific patient
20 populations?

21 A. So the Rheo Knee is indicated for the K3
22 population. That is dependent on a payer type, like
23 Medicare or a private insurance that will cover Medicare
24 or alike codes.

25 Then there is the Rheo Knee XC which is

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1 somewhat indicated for the same group, K3 -- actually,
2 K3 to K4 where patients have the ambition to add more
3 activities to their portfolio. So they will be able,
4 with the Rheo Knee XC, to bike in an easy fast
5 transition. They will be able to walk up stairs, step
6 over steps. They will be able to utilize the knee to
7 step over obstacles.

8 So those are the three main functional
9 differences between Rheo Knee XC and the Rheo Knee, and
10 those functional differences are not described in the
11 codes. So there you're dependent on people that have
12 better private insurance or you would have users that
13 are dependent on Veterans Affairs coverage or DOD
14 coverage.

15 And then the Power Knee is indicated for the
16 same group of patients in the K3 realm that have a need
17 for an actively supportive knee which basically helps
18 them lift them out of a chair which helps them --
19 actually walks for them every step so that the knee
20 clears the ground easier in swing phase, and because of
21 the propulsion generated by the motor, the knee makes it
22 even lighter for them to walk.

23 So when you then look at it from a positionings
24 perspective, it's likely that a Power Knee is going to
25 be indicated for the lower segment of the K3 population,

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1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6 Q. But aside from the latest iteration of the Rheo
7 Knee, does Ossur have any other plans, microprocessor
8 knee launches, in the next few years?

9 A. Currently only based on the existing technology
10 platforms that we've invested in, so that's
11 magnetorheologics and Power Knee.

12 Q. When we were speaking of the positioning of the
13 Rheo Knee previously, I believe you had mentioned that
14 it targets those higher mobility K3, K4 patients.

15 Is that still true of the latest iteration of
16 the Rheo Knee?

17 A. Yes, I would say so. Possibly slightly larger
18 part of the K3 population than the previous one, but I
19 would say it's still, still in that same realm.

20 Q. Do you have another iteration of the Rheo Knee
21 planned or in the works?

22 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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1 say.

2 Q. Who are Ossur's primary microprocessor knee
3 competitors today in the United States?

4 A. So Ottobock would be the biggest one with a
5 portfolio that sits within the same price ranges. Then
6 you would have Freedom as, I would say, a third, and
7 then there's a player from Asia which is Nabtesco which
8 it's more difficult to really estimate their market
9 share. They're primarily managed through distribution.
10 And then there's a company out of England which is
11 Blatchford Endolite. They're also a player in that
12 segment.

13 Q. You mentioned Nabtesco, and I think I heard you
14 say that they only use distribution; is that correct?

15 A. That's right.

16 Q. So Nabtesco does not have a U.S. sales force
17 today?

18 A. Not that I'm aware of, no.

19 Q. How does the Nabtesco technology compare to the
20 C-Leg?

21 A. So like I described in the beginning, you have
22 three segments. You have the hydraulic units, you have
23 the magnetorheologics, and then you have the ones that
24 combine hydraulics and pneumatics.

25 That's where -- the last category is where the

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1 Nabtesco knee can be found. So it's a combination of
2 pneumatics and hydraulics.

3 Q. Are you familiar at all with Nabtesco's current
4 market share?

5 A. Like I said, it's very difficult to estimate.
6 I could not tell you exactly for sure.

7 Q. Is it smaller than Ossur's?

8 A. Yes.

9 Q. In your view is the Nabtesco technology as good
10 as the C-Leg?

11 A. I don't think so.

12 Q. Why is that?

13 A. I think where the hydraulics is superior is in
14 the level of support it offers to the patient, and I
15 also would say that the artificial intelligence that
16 controls the C-Leg is superior to that of the Nabtesco
17 knee.

18 Q. You also mentioned Endolite. Do you know how
19 large Endolite's share is on the market today?

20 A. We believe that they're in a fourth position.
21 Exact market share on microprocessor alone, I need to
22 make some calculations in my head here.

23 I would say it's probably in the realm of, I
24 would say, 5 percent to 8 percent.

25 Q. In your experience have you seen them gaining

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1 shares over the last few years, or have they remained
2 relatively consistent?

3 A. I think they've probably been up and down a
4 little bit in terms of market share.

5 Q. But usually within that range of 5 to
6 8 percent?

7 A. I would think so.

8 Q. Who is the current market leader for
9 microprocessor knees in the United States?

10 A. Ottobock.

11 Q. Why is that the case?

12 A. I'd say primarily because they have had the
13 product on the market the longest, so there's a legacy
14 there.

15 Second to that, I think there's also a close
16 customer collaboration between them and the largest
17 prosthetic provider in the industry which is Hanger
18 Prosthetics, and they have always preferred the Ottobock
19 C-Leg over other technologies, and --

20 Q. When is --

21 A. -- I think that the latter, more functional
22 related part is the fact that the C-Leg does have the
23 type of supports and security feeling for users that is
24 more preferred by the lesser active patients. So the
25 ones that are high K2, low K3, and that is where a

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1 rather large part of the amputee population resides,
2 being the fact that our amputee population is mainly
3 vascular and diabetic, and those patients are in the age
4 range of 60 to 70. So they're typically falling within
5 that bracket.

6 Q. And as you mentioned earlier, Ossur's Rheo
7 line --

8 THE REPORTER: I'm sorry. I missed that. I
9 apologize. I missed that.

10 MS. LAO: Sorry. Let me restart that.

11 BY MS. LAO:

12 Q. And as you mentioned earlier, the patient
13 population that Ossur's Rheo line targets is the higher
14 mobility K3, K4 patients; is that correct?

15 A. That is correct. Not to say --

16 Q. Where does Freedom --

17 A. Sorry. Not to say that we haven't made efforts
18 to try to make it more appealing for the other
19 population as well, but I'd say that there still is a
20 preference on the C-Leg technology in that segment.

21 Q. Where does the Freedom technology fit in?

22 A. So the current Freedom technology, as in the
23 Plie, would probably fit into the mid K3 segment of the
24 population, mid to -- yeah, mid to higher, probably.

25 Q. When did Freedom enter the U.S. market for

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1 microprocessor knees?

2 A. Ooh, I need to dig into my memory. Top of
3 mind, I would say probably six, seven years ago.

4 Q. When Freedom entered the U.S. market, did you
5 see a response from Ottobock in terms of pricing or
6 features?

7 A. I would say that it definitely stimulated them
8 to speed up the developments in terms of adding features
9 into their product, and I think it's fair to say that
10 given the pricing structure and strategy of Freedom,
11 that there was somewhat of a response from Ottobock to
12 that as well.

13 Q. You mentioned pricing strategy of Freedom.
14 What did you mean by their pricing strategy?

15 A. So in general, it's fair to say that Freedom's
16 value proposition is more a price proposition, whereas
17 the value proposition of Ossur is more around quality of
18 service, quality of products, and level of innovation.

19 Q. You mentioned that Ottobock responded to
20 Freedom's entry with faster innovations.

21 Do you mind elaborating?

22 A. So let's say that -- and I think it goes hand
23 in hand with just the timing of the market. When
24 there's more competition on the market, obviously it
25 triggers us to be more competitive and bring out faster

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1 iterations and versions of the product. So I would say
2 that's one part of it.

3 So, yeah, I would say I think that it just sped
4 up the versioning and the iterations of the product.

5 Q. How does Freedom fare compared to Ottobock's
6 C-Leg in terms of features and functionality?

7 A. I would say that it's comparable in terms of
8 technology. I think features-wise, the main strength of
9 the C-Leg remains the level of resistance it offers
10 which I don't think the Plie has matched.

11 So, yeah, technology-wise it's very similar, I
12 think, from a features and actual functionality
13 perspective. I would say safety, stability would be
14 what the patients would look for in a Plie -- sorry --
15 in a C-Leg.

16 Q. In your view are those two legs relatively
17 substitutable given the fact that they function from the
18 same hydraulics technology?

19 A. I would say to an extent, yes, but not the same
20 extent as the knee that Freedom has or had in
21 development. I think that one is definitely more -- was
22 definitely more to be a substitution to the existing
23 Ottobock C-Leg business.

24 Q. Could you tell us a bit more about the leg --
25 the knee that's in development at Freedom that you're

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1 referring to?

2 A. Yes. So, well, they refer to it as the C-Leg
3 Killer or Quatro is the work name of the project. So
4 from what they told us -- and I'll admit that we
5 obviously had very little exposure to the product. We
6 received some videos where we could look at the product.

7 But it was intended to basically mimic the
8 functionality of a C-Leg, increasing significantly the
9 resistance which the Plie was lacking, to cover that
10 lower part, lower segment of the K3 population, as well
11 as, actually, because they spoke about the whole range,
12 from low K3 all the way to high K4. That was what they
13 were targeting.

14 Q. And in these discussions, are you referring to
15 when Ossur was looking at potentially acquiring Freedom
16 Innovations?

17 A. That is correct.

18 Q. Did Ossur ever have the opportunity to test the
19 Quatro or the C-Leg Killer?

20 A. Sorry. Did Ossur have the ability? No, we did
21 not have the ability to do that. Requested but not
22 granted.

23 Q. If Ossur had had the opportunity to test the
24 Quatro and it turned out to have all of the
25 functionality that you had just described, do you think

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1 Ossur might have been willing to potentially increase
2 its final bid?

3 A. I think it's fair to say that the valuation
4 could have been higher or the bid could have been
5 higher. I think when you look at our due diligence
6 material, you'll notice that there is a difference
7 between the valuation and the actual bid, and I think
8 that has everything to do with the assumptions that the
9 product could be as good as they described it but then
10 the reservations whether it would be.

11 So that's basically how we decided to go with
12 the lower bid based on the question marks around it, but
13 if it would have, indeed, done what they described, I
14 think it would or I think -- I would have valued it
15 higher, and I think the bid would have been higher as
16 well.

17 Q. In terms of Ossur's perspective, from what you
18 could see through the due diligence, would you have
19 anticipated that the Quatro launch would have taken a
20 share from Ottobock's C-Leg sales?

21 A. Yes, definitely.

22 Q. Would the pricing have been comparable for the
23 Quatro versus the C-Leg?

24 MS. REEVES: Objection. Calls for speculation.

25 You're free to answer, Kim.

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1 THE WITNESS: Okay. Well, they made some comments
2 about the price range, and that would have been in that
3 level of the existing microprocessor knees out there
4 list price-wise. So it would be complete speculation if
5 I would say anything about the actual sales price.

6 BY MS. LAO:

7 Q. Of course, but based on what Ossur had seen in
8 due diligence, was the plan to price the new Quatro
9 similarly to the C-Leg that's on the market today?

10 A. Yes.

11 Q. I'd like to talk about the sale of Freedom in
12 just a moment, but before we do so, I'd like to revisit
13 our discussion about pricing and the products on the
14 market today.

15 From Ossur's perspective, when you're targeting
16 or negotiating a price for a microprocessor knee with a
17 clinic that has multiple locations, does Ossur set
18 different prices for different locations?

19 A. If there's one owner, then typically the price
20 would be the same for all locations.

21 Q. And that would be the same price would be
22 charged to the clinic for all locations in the U.S.?

23 A. For that same owner, yes.

24 Q. During pricing discussions with clinics, which
25 competitors come up most frequently from Ossur's point

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1 of view?

2 A. I would say that in the last four to five
3 years, it has been primarily Freedom or the Plie, in
4 that case.

5 More recently, there's more talk about Ottobock
6 products as well and then the occasional Orion product
7 from Endolite, Blatchford, as well, and then Nabtesco is
8 mentioned as well, for sure.

9 So I think all of them come up.

10 Q. Is it fair to say that Nabtesco comes up less
11 frequently than Freedom and Ottobock?

12 A. Yes. I think so, yes.

13 And I think, if I may add to that, I think that
14 is related to the fact that it's distributed through
15 distribution only. There's no direct sales force there.
16 So I think that probably reduces the likelihood of that
17 discussion.

18 Q. I'd like to talk briefly about Ossur's
19 experience in developing the Rheo.

20 Did Ossur develop or acquire the Rheo Knee
21 originally?

22 A. I would say that we acquired the technology
23 platform but then developed it into a commercial
24 product.

25 Q. Can you estimate what the total development

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1 cost was for Rheo?

2 A. Very tough to put an accurate price on it, but
3 I would say -- I mean, we acquired the technology
4 platform for an amount that was included in an
5 acquisition at the time, so it's tough to break it down
6 as to what it cost in acquisition.

7

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 Q. And do you have an estimate of how much there
12 was involved in the development of the technology by the
13 previous owner?

14 A. I can't speak to that.

15 Q. Do you know how long it took to develop the
16 Rheo technology?

17 A. In total or at the previous owner?

18 Q. In total, including the previous owner.

19 A. We have to take into consideration that the
20 original development started at MIT.

21 And that's not uncommon that the universities
22 are starting up projects for research and development,
23 and they come up with a technology platform that is
24 basically proving feasibility. It's kind of a research
25 project.

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1 So that technology was from them, transferred
2 over. I would have to look it up. I can't answer that
3 off the top of my head when Hugh Herr actually started
4 that development in MIT.

5 But I would say that probably when it came to
6 Flex-Foot, the company we ended up acquiring, they
7 probably had it for three, four years prior to our
8 acquisition.

9 Q. And then as you mentioned earlier, there was
10 additional development within Ossur after that
11 acquisition, correct?

12 A. Yes. We did not launch the product until 2004,
13 whereas the acquisition of the technology happened in
14 2000.

15 Q. I'd like to talk about the sale of Freedom
16 Innovations.

17 When did Freedom initially reach out to Ossur
18 regarding its sale?

19 A. I would say that must have been in the May-June
20 time frame.

21 Q. May-June of this year?

22 A. Of this year, yes.

23 Q. Who was responsible for contact with Freedom
24 within Ossur?

25 A. I believe the CEO of the company actually was

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1 the one contacted first.

2 Q. How did Ossur react?

3 A. Well, being a company that has expanded and
4 grown over time through organic growth as well as
5 acquisition in this competitive but consolidated field,
6 we were looking at the opportunity. We're obviously
7 interested in continuing to grow, to grow our business,
8 and to continue to provide a wider product offering to
9 the patients in our pursuit to provide them with the
10 life without limitations which is our company slogan.

11 Q. When did Ossur make its preliminary offer?

12 A. That would have been in the August time frame.

13 Q. August was when Ossur made its preliminary
14 initial offer?

15 A. I believe so.

16 I mean, do you have more specific information
17 there or?

18 I believe it was in August, yeah.

19 Q. Do you know what valuation Ossur initially
20 assigned to the Freedom business?

21 A. Well, I know that our offer was in the range of

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 only offer we made.

2

3

4 A. That's correct.

5 Q. Did Ossur conduct due diligence related to the
6 deal?

7 A. We did, but let's say that we didn't do it to
8 the extent we would have liked to do it, given the time
9 pressure under which Freedom was acting.

10 Q. Did the valuation that Ossur assigned to the
11 Freedom business change between the time it made the
12 initial valuation and after it conducted due diligence?

13 A. I seem to recall that it didn't really. I
14 mean, the valuation, yes. The valuation went through
15 several iterations. The actual bid was fairly stable
16 from the get-go.

17 Q. I see. How did the valuation change separate
18 from the bid?

19 A. I think it was based on running different
20 scenarios, but the main factor affecting the valuation
21 was the uncertainty around the actual quality of that
22 C-Leg Killer product, the Quatro, that they had in
23 development.

24 So it was not clear. We got indications. They
25 basically detailed the product to us, and upon our

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1 request to actually get more information to be able to
2 try it on patients and to see it for ourselves, that was
3 a back and forth.

4 So we decided to make valuations based on
5 assumptions of the quality of the products, and that led
6 to several scenarios.

7 But in the end we decided because of the
8 uncertainty that at that stage, you know, we kept our
9 offer -- or the bid where it was and expected that in
10 the next stage of potential due diligence, we would
11 have gotten further access to the technology to verify
12 and then potentially adjust the offer based on our
13 findings.

14 Q. After conducting the due diligence, what was
15 your impression of the Quatro product? I understand you
16 weren't able to test it.

17 A. Yeah. So from looking at the videos, I will
18 tell you that it is very difficult to get a good feel
19 for how stable or unstable or how well the knee
20 functions.

21 But let's say that the material they provided
22 us included the footage of a person that is a very known
23 person within the industry, and without asking him any
24 specifics, we asked him whether he had been on a knee.
25 Because he tried the Rheo Knee in the summertime as

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1 well.

2 So we asked him just in his opinion, how did he
3 feel about the Rheo after having tried it, and at that
4 moment he said that, well, I've had the luxury to try
5 some other stuff that is in development that I can't
6 really talk about, but I'll give you this, that the Rheo
7 Knee I tried is very different from the device that I
8 was asked to try just recently, but that device did
9 tell -- in his mind, did give a very similar feel as to
10 what the C-Leg did which he tried as well.

11 So that kind of led us to the point that, okay,
12 in the next-stage due diligence, it would be very
13 interesting to put more into that. Because one person's
14 opinion is obviously not the general population's
15 opinion, but, yeah, I think that that gave us the
16 indication that, hey, there's something there that we
17 would have liked to further evaluate if given the
18 chance.

19 Q. Is it fair to say that at the time that Ossur
20 made a bid for the Freedom business, it saw value in
21 that business?

22 A. Yes.

23 Q. And is it fair to say that when Ossur made that
24 bid for the Freedom business, it saw value specifically
25 in the microprocessor knee price line that Freedom had

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1 in the works?

2 A. Yes.

3 MS. REEVES: Objection. Leading.

4 You're free to answer.

5 THE WITNESS: Yes.

6 BY MS. LAO:

7 Q. Now, did Ossur make any plans regarding what it
8 would do with the Freedom product if it had acquired the
9 company?

10 A. We did, and definitely when looking at the
11 current existing product line, we saw quite some
12 opportunities of complementary additions to our product
13 offering. There was some overlap as well.

14 So we were looking at two options which was to
15 streamline the overall offering in a very clear and
16 clean way to the customer. At the same time, we also
17 evaluated whether Freedom could continue to exist as a
18 standalone brand, knowing that from a customer's
19 perspective and a pricing standpoint, it is a brand that
20 people appreciate in terms of having access to
21 mainstream product at very competitive prices.

22 So in the due diligence you'll read up on our
23 efforts or our -- yeah, our efforts to try to streamline
24 their portfolio within ours, which obviously has a base
25 of assumptions.

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1 But the majority of their biggest prosthetic
2 feet, for instance, we were expecting to continue to
3 have those as an addition and a complementary aspect to
4 our product line.

5 We would have definitely continued the
6 development of the C-Leg equivalent given that, you
7 know, that would be a good opportunity for us to gain
8 market share within the business.

9 Then they have a microprocessor ankle which
10 they are at the end stage of development, according to
11 their information, which is based on a hydraulic
12 technology which is very different from the technology
13 that Ossur has chosen for microprocessor ankles which is
14 a motorized-type device.

15 So for us that could have meant a good addition
16 of an alternative technology platform to that segment
17 which is a segment that is expected to be a growing
18 segment in the future.

19 So, yeah, I think it's fair to say that there
20 was some good opportunity there to expand on our product
21 offering and tap into new technology platforms that
22 would open up a larger population group and would allow
23 us to provide better outcomes for patients.

24 Q. With respect to the Plie, what would Ossur
25 have planned to do with the Plie had it acquired

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1 Freedom?

2 A. Now, I have to kind of put my hat on as a
3 global marketing person at the time. Because what Plie
4 has that the Rheo Knee doesn't have and which is greatly
5 appreciated by patients is the fact that it is
6 waterproof. So it is submergible. Same goes for the
7 C-Leg. Does not apply to the Rheo Knee.

8 So for us it was a good opportunity to offer
9 that waterproof solution, and especially in certain
10 markets that are outside of the United States. When we
11 look at some of the European markets but also some of
12 the Asian markets, Middle East, there are opportunities
13 there with people that require products that are
14 waterproof, that require products that are better
15 ingress-ion-protected for sand and such.

16 So for us there was a good opportunity to
17 continue to have the Plie as a separate segment within
18 our microprocessor offerings, and definitely when you
19 look at the Quatro, I believe that product would have
20 done very well for us as well in that same segment.

21 And possibly over time there would have been a
22 rollover, a natural rollover from the hydraulic version
23 of the Plie over to the Quatro. So that, I think, would
24 have been a possible scenario, but it's difficult to
25 say.

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1 And then we're always very careful when
2 considering the phaseout of a product. We do that with
3 our own products and especially with a product that has
4 a significant dollar amount associated to it. I think
5 they would have probably co-existed in a broader range
6 of microprocessor knees and with a definite benefit for
7 us on a global level.

8 Q. Would Ossur have planned to keep the Plie at
9 its current price point had it acquired it?

10 MS. REEVES: Objection. Calls for speculation.

11 You're free to answer.

12 THE WITNESS: Okay. I think it's fair to say. I
13 think, you know, there are reasons why customers
14 purchase that product, and then some of it is
15 price-driven. Some of the reimbursement levels are
16 simply not as beneficial as others, and for that reason
17 sometimes they're pushed in that direction. So it would
18 have been a good thing for us to keep that price level.

19 I think also at the price level it would have
20 allowed us, let's say, in those other markets outside of
21 the United States, it would have allowed us to offer it
22 in countries where reimbursement systems simply are not
23 as beneficial as they are in the United States.

24 BY MS. LAO:

25 Q. Did Ossur have plans for what it would do with

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1 the Freedom facilities had it gone through with the
2 acquisition?

3 A. Yes. I think there was a good opportunity for
4 consolidation or at least utilization of same locations
5 when it comes to feet manufacturing.

6 When it comes to the bionics, being the bionic
7 ankle as well as the microprocessor knee, I think we saw
8 a good opportunity to just keep that very close to the
9 R&D facility of Freedom.

10 And in our due diligence, the plan was to
11 actually keep the R&D department. Obviously because of
12 the development ongoing on the Quatro, we would have
13 kept that in its -- well, maybe not in its current
14 location, but we would have kept it here in California
15 with the same people working on the same project.

16 So it would have been more of a consolidation
17 on the back end when it comes to the supporting services
18 as finance and manufacturing and operations for their
19 feet.

20 And then sales and marketing, let's say that we
21 had some assumptions, but we didn't really conclude it
22 because the due diligence actually didn't last as long.
23 But I think there, there would have been an integration,
24 very likely an integration into the Ossur structure,
25 yeah.

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1 Q. In terms of the acquisition itself by Ottobock,
2 why do you think Ottobock decided to purchase Freedom?

3 MS. REEVES: Objection. Calls for speculation.

4 You're free to answer.

5 THE WITNESS: Okay. So I was about to say, it's
6 difficult for me to read their minds.

7 But if I were in their shoes, obviously Freedom
8 had a very good prosthetic feet line, whereas Ottobock's
9 is much less developed in spite of them having been in
10 the industry much longer. So I think they saw an
11 opportunity there to get a stronger position in the
12 market on prosthetic feet.

13 Other than that, I would say that clearly the
14 fact that the so-called C-Leg Killer would have been a
15 significant threat to their current market share, and it
16 could have been a defense mode to actually make sure
17 that that technology was in their hands rather than to
18 end up in the hands of their closest competitor.

19 BY MS. LAO:

20 Q. You mentioned earlier about had Ossur had the
21 opportunity to test the Quatro product, it's possible
22 that Ossur might have increased its bid.

23 Sitting here today, does Ossur still have any
24 interest in purchasing Freedom Innovations if it were
25 available for sale?

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12/6/2017

1 A. I think, yes, maybe we would still have
2 interest. Obviously it would have to be at the right
3 price, but I think there probably is an interest still,
4 yes.

5 Q. If the Freedom Innovations business were

6 [REDACTED]
7 would Ossur have an interest in the business today?

8 A. Well, obviously I'm not the sole decision-maker
9 there, but I think it would be reasonable that we would
10 dig back into the due diligence and evaluate whether
11 that offer is still a valid offer.

12 MS. LAO: Let's go off the record.

13 (Recess taken from 12:51 p.m. to 12:58 p.m.)

14 MS. LAO: Can we please go back on the record.

15 THE REPORTER: Yes.

16 MS. LAO: So, Mr. De Roy, thank you so much for
17 your time. I think those are all the questions that we
18 had.

19 Mandy, are there any clarifications that you
20 would like to make?

21 MS. REEVES: Yes, I had just a few follow-up
22 questions.

23 EXAMINATION BY COUNSEL FOR OSSUR AMERICAS AND THE

24 WITNESS:

25 / / /

DeRoy

Ottobock Healthcare and Freedom Innovations

12/6/2017

1 BY MS. REEVES:

2 Q. First, Mr. De Roy, when did Ossur make its
3 initial proposal to acquire Freedom?

4 A. It was, in fact, in July.

5 Q. And then when did Ossur make its final binding
6 bid?

7 A. That was in August.

8 MS. REEVES: That's all. I have no further
9 questions.

10 MS. LAO: All right. Thanks, everybody, for your
11 time. I hope everyone has a wonderful rest of the day.

12 Let's go off the record, please.

13 (Whereupon, the investigational hearing
14 concluded at 12:59 p.m.)

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DeRoy

Ottobock Healthcare and Freedom Innovations

12/6/2017

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2

3 I, Sandra Jo Roberts, the officer before whom the
4 foregoing proceedings were taken, do hereby certify
5 that the foregoing transcript is a true and correct
6 record of the proceedings; that said proceedings were
7 taken by me stenographically and thereafter reduced to
8 typewriting under my supervision; and that I am neither
9 counsel for, related to, nor employed by any of the
10 parties to this case and have no interest, financial or
11 otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 7th day of December, 2017.

14

15

16

s/Sandra Jo Roberts

17

Sandra Jo Roberts, CSR

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Certificate No. 5086

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DeRoy

Ottobock Healthcare and Freedom Innovations

12/6/2017

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ACKNOWLEDGMENT OF DEPONENT

I, Kim Peter Viviane De Roy, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes and/or corrections, if any, appear in the attached errata sheet signed by me.

Date Kim Peter Viviane De Roy

DeRoy

Ottobock Healthcare and Freedom Innovations

12/6/2017

1 ERRATA SHEET

2 Page No. _____ Line No. _____ Change to: _____

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24 SIGNATURE: _____

25 Kim Peter Viviane De Roy

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

-----)
IN THE MATTER OF:) DOCKET NO.
OTTO BOCK HEALTHCARE NORTH AMERICA,) 9378
INC.,)
-----)

DEPOSITION OF KIM PETER VIVIAN DEROY
Washington, D.C.
March 23, 2018

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, PA 19103

1 Deposition of KIM PETER VIVIAN DERROY, held
2 at the offices of:

3
4 Latham & Watkins, LLP
5 555 11th Street, NW
6 Washington, D.C. 20004

7
8 Taken pursuant to agreement before Tina M.
9 Alfaro, a Notary Public within and for the District
10 of Columbia.

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1 (Witness sworn.)

2 WHEREUPON:

3 KIM PETER VIVIAN DERROY,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. McCONNELL:

8 Q. Good morning, Mr. DeRoy.

9 A. Good morning.

10 Q. My name is Sean McConnell and I'm an
11 attorney representing Respondent Otto Bock
12 Healthcare North America. If I refer to Otto Bock
13 today, I will be referring to Otto Bock Healthcare
14 North America. Do you understand that?

15 A. Yes.

16 Q. I will be asking you questions today about
17 Otto Bock's acquisition of FIH Group Holdings, LLC.
18 If I use Freedom Innovations or Freedom today, I
19 will be referring to FIH Group Holdings LLC. Is
20 that okay?

21 A. Yeah.

22 Q. And when I refer to the transaction or
23 acquisition between Otto Bock and Freedom, you'll
24 understand that that's the transaction or

1 acquisition that I'm referring to today?

2 A. Yes.

3 Q. Could you please state your name for the
4 record.

5 A. Kim Peter Vivian DeRoy.

6 Q. Could you please state your employer for
7 the record.

8 A. Ossur.

9 Q. Can you please state your employer's
10 address for the record.

11 A. Grothjals, G-R-O-T-H-J-A-L-S, No. 5 in 110
12 Rakovic.

13 MR. McCONNELL: Can counsel present today
14 please identify themselves for the record.

15 MS. SULLIVAN: Marguerite Sullivan on
16 behalf of the witness and Ossur.

17 MR. COFFIN: Alex Coffin, counsel for
18 Ossur.

19 MR. HUTCHINSON: Zachary Hutchinson,
20 Latham & Watkins on behalf of the witness.

21 MS. LAO: Linda Lao on behalf of the
22 Federal Trade Commission.

23 MS. WOHL: Sara Wohl on behalf of the
24 Federal Trade Commission.

1 MS. McNEIL: Betty Jean McNeil on behalf
2 of the Federal Trade Commission.

3 BY MR. McCONNELL:

4 Q. Mr. DeRoy, have you ever been deposed
5 before?

6 A. Yes.

7 Q. How many times have you been deposed?

8 A. Just once.

9 Q. Is the one time the time with the FTC in
10 this matter?

11 A. Correct.

12 Q. And that was the fall of 2017, correct?

13 A. It was in December, if I remember
14 correctly.

15 Q. December of 2017?

16 A. Yes.

17 Q. Besides the deposition with the Federal
18 Trade Commission you've never been deposed before;
19 is that correct?

20 A. That's correct.

21 Q. Have you ever testified under oath before
22 besides that deposition?

23 A. No.

24 Q. Have you had any communications with the

1 Federal Trade Commission about this case outside of
2 that deposition?

3 A. No.

4 Q. Do you know if anyone from Ossur has had
5 communications with the FTC about this case outside
6 of your deposition?

7 A. No. Apart from counsel I guess, no.

8 Q. You mentioned earlier that your employer
9 was Ossur. Is that Ossur HF?

10 A. That's correct.

11 Q. So if I refer to Ossur during today's
12 deposition, is it your understanding I'll be
13 referring to Ossur HF?

14 A. Yes.

15 Q. Did you review your testimony from the
16 December 2017 deposition in preparation for today's
17 deposition?

18 A. I did.

19 Q. Is there any testimony from your
20 deposition on December 6, 2017 that you would like
21 to change before we get started today?

22 A. No.

23 Q. What did you do to prepare for your
24 testimony today?

1 A. I reviewed the previous deposition and I
2 reviewed the documentation that was made available
3 for the matter from Ossur.

4 Q. When you say documentation made available
5 by Ossur, are you referring to the document
6 production that Ossur made in this case?

7 A. That's correct.

8 Q. Did you have any discussions with anyone
9 at Ossur to prepare for your deposition today?

10 A. Yes.

11 Q. Who at Ossur did you speak with to prepare
12 for today's deposition?

13 A. With legal counsel.

14 Q. Besides legal counsel at Ossur, did you
15 have any discussions with anyone else at Ossur in
16 preparation for today's deposition?

17 A. No.

18 Q. Is there any reason that you cannot
19 testify truthfully and accurately today, Mr. DeRoy?

20 A. No.

21 Q. Even though you've been through this once
22 before, I'm going to go over a few ground rules for
23 today's deposition, if that's okay.

24 All of my questions and your answers will

1 be recorded by the court reporter. Please answer
2 my questions orally so that the court reporter can
3 record your answers. Please avoid head nods or
4 head shakes as the court reporter cannot record
5 that for the record.

6 We can't speak over each other. The court
7 reporter can't take two statements at once. So
8 please wait until I finish a question to respond,
9 and I will do my very best to allow you to complete
10 your response before I start another question.

11 If you don't understand a question, please
12 say so. Otherwise if you answer, I will understand
13 that you fully understood my question. Is that
14 okay?

15 A. Yes.

16 Q. I'd like to remind you that you're under
17 oath testifying just as you would in a court of
18 law, and if at any point you realize you've
19 answered a question incorrectly or incompletely,
20 please let me know. Otherwise I will assume that
21 your answers today are accurate and complete. Do
22 you understand that?

23 A. Yes.

24 Q. We can take regular breaks if you like.

1 If you need a break at any time, please ask and
2 I'll be happy to allow you to take a break. I just
3 ask that if I have a question pending you complete
4 your response to my question before we take a
5 break. Is that okay?

6 A. Sounds good.

7 Q. Do you understand these instructions that
8 I've just provided?

9 A. Yes.

10 Q. Do you agree to abide by them to the best
11 of your ability today?

12 A. I do.

13 (DeRoy Exhibit 1 and
14 Exhibit 2 were marked as
15 requested.)

16 BY MR. McCONNELL:

17 Q. Mr. DeRoy, you've just been handed
18 Exhibits 1 and 2. They are subpoenas ad
19 testificandum for today's deposition reflecting the
20 fact that you'll be providing testimony today both
21 on behalf of yourself and on behalf of Ossur. Did
22 you review -- have an opportunity to review DeRoy 1
23 and DeRoy 2?

24 A. I did.

1 Q. Did you review these documents to prepare
2 for your deposition today?

3 A. I did.

4 Q. There is a list of 26 topics attached to
5 the subpoena ad testificandum directed to Ossur in
6 DeRoy 2; do you see that?

7 A. Yes.

8 Q. Are you prepared today to answer questions
9 on the topics reflected in DeRoy 2?

10 A. I am.

11 Q. Do you understand that you are the person
12 that Ossur has designated to testify on behalf of
13 the company regarding those topics?

14 A. I do.

15 Q. If your answer at any point today would be
16 different in your capacity as Ossur's designee
17 versus your personal knowledge, please state so for
18 the record. Okay?

19 A. I will.

20 Q. Just to be clear, between the time that
21 you testified on December 6, 2017 and today you've
22 not had any discussions with anyone at the Federal
23 Trade Commission about this case, correct?

24 A. Correct.

1 Q. Mr. DeRoy, what is your current position
2 at Ossur?

3 A. I am the executive vice president of R&D.

4 Q. What responsibilities does the executive
5 vice president of R&D have at Ossur?

6 A. I oversee their research and development
7 of all prosthetics and basing and support products
8 in the organization.

9 Q. And, Mr. DeRoy, you've been at Ossur since
10 2002, correct?

11 A. That is right.

12 Q. And you've held various positions at Ossur
13 since 2002 related to prosthetics, correct?

14 A. Correct.

15 Q. You've held roles at Ossur since 2002
16 involved in research and development, sales,
17 marketing all related to prosthetics in the United
18 States, correct?

19 A. Not only in the United States, but yes,
20 those roles, R&D, product management, marketing,
21 sales.

22 Q. So it's fair to say that you have
23 significant experience in the U.S. prosthetics
24 market, correct?

1 A. Yes.

2 Q. Would it be fair to say that you have
3 significant experience regarding the sales of
4 prosthetic knees and feet in the United States?

5 A. I do.

6 Q. Unless I specify otherwise, my questions
7 today will be referring to Ossur's business in the
8 United States. Is that okay?

9 A. Yes.

10 Q. Can you please describe Ossur's prosthetic
11 business in the United States.

12 A. Which aspects of it would you like me to
13 describe?

14 Q. For example, what product -- what
15 prosthetic products does Ossur sell in the United
16 States currently?

17 A. So we sell a broad range of prosthetic
18 products which include the liners, include
19 prosthetic feet, prosthetic knees, the components
20 that hold them together, we provide customized
21 solutions including prosthetic sockets, and then in
22 the knee segment we have both the mechanical knees
23 and then we have the bionic knees as they're
24 referred to.

1 Q. With respect to lower limb prosthetic
2 solutions, is it fair to say that Ossur
3 manufactures and sells all of the components to a
4 lower leg extremity in the United States?

5 A. That's correct.

6 Q. For how long has Ossur sold prosthetics in
7 the United States?

8 A. For as long as I've been with the company
9 and prior to that as well.

10 Q. How much revenue from prosthetic sales did
11 Ossur earn in 2017 in the United States?

12 [REDACTED]
13 [REDACTED] I might want to add some of that is
14 upper extremity as well since I didn't mention that
15 specifically.

16 Q. Thank you.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1

2 Q. I'd like to start talking a little bit
3 about Ossur's prosthetic feet. When did Ossur
4 start selling prosthetic feet in the United States?

5 A. We had a product that precedes my presence
6 in the company, the Master Step, which was sold I
7 believe in the '90s, but the main entrance into
8 prosthetic feet started in 2000 with the
9 acquisition of Flex-Foot.

10 Q. I know that was before your time at the
11 company, but do you remember how many foot products
12 Flex-Foot made in 2000 when Ossur acquired it?

13 A. I would say it's probably a product line
14 of ten different feet.

15 Q. Did Flex-Foot make any other prosthetic
16 products besides feet when Ossur acquired it around
17 2000?

18 A. They were in development, but they didn't
19 commercialize a bionic knee at the time. I do
20 believe they had a mechanical knee called the Mauch
21 Knee at the time.

22 Q. Ossur currently sells a Mauch knee in the
23 United States?

24 A. Correct.

1 Q. Is that the same platform product?

2 A. Correct.

3 Q. And you testified that Flex-Foot was in
4 development of a bionic knee when Ossur acquired it
5 in 2000, correct?

6 A. Correct.

7 Q. Was the development of that bionic knee at
8 Flex-Foot in conjunction with MIT?

9 A. Correct.

10 Q. How many different prosthetic feet
11 products does Ossur sell in the United States
12 today?

13 A. Probably in the range of 20.

14 Q. Has Ossur's prosthetic feet portfolio
15 changed at all since September 2017 when Otto Bock
16 acquired Freedom?

17 A. No, it has not.

18 Q. Who do you consider to be the market
19 leader for sales of prosthetic feet in the United
20 States?

21 A. I would say Ossur is the market leader.

22 Q. Who are Ossur's primary competitors with
23 respect to selling prosthetic feet in the United
24 States?

1 A. That would be Freedom and Otto Bock are
2 the main competitors. Then there is College Park,
3 there is Endolite Blatchford.

4 Q. Anyone else?

5 A. Well, until prior to the acquisition Medi
6 was selling feet in the United States as well.
7 Then there's TruLife is one more company. I'm sure
8 I'm forgetting one or two smaller companies.

9 Q. When you say the acquisition of Medi, are
10 you referring to Ossur's acquisition of Medi?

11 A. Correct.

12 Q. When did Ossur acquire Medi?

13 A. 2016.

14 Q. When Ossur purchased Medi in 2016 Medi was
15 making prosthetic feet in the United States?

16 A. They were not making them in the United
17 States. They were making them in Germany, but they
18 were selling them.

19 Q. Thank you for clarifying. About how many
20 prosthetic feet was Medi selling in the United
21 States when Ossur purchased Medi in 2016?

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] So it was a very small part of

1 their business.

2 Q. Do you remember how many different types
3 of feet?

4 A. Essentially they were only selling one
5 brand of feet with two or three variants of it.

6 Q. Of the competitors that you just listed,
7 who does Ossur consider to be its closest
8 competitor for the sale of prosthetic feet in the
9 United States?

10 A. I would say Freedom would have been the
11 closest. There's actually one company that you
12 should add to the list, Rush, R-U-S-H.

13 Q. Thank you, Mr. DeRoy. If you remember
14 anyone else during the deposition --

15 A. I'll let you know.

16 Q. -- let me know.

17 On a unit basis do you know how many
18 prosthetic feet Ossur sold in the United States in
19 2017?

20 A. I would guess, but I think I would
21 probably make a mistake there.

22 MS. SULLIVAN: Do you want him to guess?

23 MR. McCONNELL: If the best he can do is a
24 reasonable estimate, that would be great.

1 BY THE WITNESS:

2

3

4

Q. I'd like to turn now, Mr. DeRoy, to
5 Ossur's sale of prosthetic knees in the United
6 States. Okay?

7

A. Uh-huh.

8

9

Q. When did Ossur start selling prosthetic
knees in the United States, do you know?

10

A. Early 2000s, mechanical knees at the time.

11

12

Q. How many different types of prosthetic
knees does Ossur sell in the United States today?

13

A. We sell roughly six or seven.

14

15

Q. Do you know the names of the six or seven
knees that Ossur sells in the United States today?

16

17

18

19

20

21

A. So we have the Total Knee, that comes in
different variants, we have the 2100, the 2000, the
1900. Then there's the Mauch Knee and the Mauch
Knee Plus. Then there's the Balance Knee that
comes in two or three variants as well. That's
about it for mechanical knees.

22

Q. I'm talking about all products.

23

24

A. Then we have the Rheo Knee, which is our
microprocessor knee, the Rheo Knee XC, which is an

1 advanced version of that knee, and then we have the
2 Power Knee.

3 Q. Does Ossur sell a hybrid prosthetic knee
4 in the United States?

5 A. We do not.

6 Q. Is Ossur in development of a hybrid
7 prosthetic knee in the United States?

8 A. We are not.

9 Q. Has Ossur's prosthetic knee portfolio
10 changed at all since September 2017 when Otto Bock
11 acquired Freedom?

12 A. No.

13 Q. Who does Ossur consider to be the market
14 leader for the sale of prosthetic knees in the
15 United States?

16 A. Otto Bock.

17 Q. Who does Ossur consider to be its primary
18 competitors with respect to selling prosthetic
19 knees in the United States?

20 A. I'd say Otto Bock again.

21 Q. Besides Otto Bock, does Ossur consider
22 anyone else a competitor for the sale of prosthetic
23 knees in the United States?

24 A. Yes. For bionic knees that would be

1 Freedom together with Otto Bock and Ossur, that's
2 kind of the top three. Then there's two smaller
3 companies. One is Endolite Blatchford and there's
4 Nabtesco out of Asia. N-A-B-T-E-S-C-O.

5 Q. And you said that Otto Bock is Ossur's
6 closest competitor for the sale of prosthetic knees
7 in the United States, right?

8 A. Correct.

9 Q. Why do you consider Otto Bock to be
10 Ossur's closest competitor for the sale of
11 prosthetic knees in the United States?

12 A. They have the biggest part of the market
13 share, they have the longest-standing reputation,
14 they have the first to market on the bionic knee
15 segment, and they have a very efficient R&D team
16 that continues to come up with renewals and
17 improvements to the product which makes it
18 competition to continue to be ahead of the game or
19 along with the game as needed to compete in the
20 market.

21 Q. I'm sure Ossur's right there with it
22 innovating and competing in the market, correct?

23 A. Yeah. We're two innovators in the field.

24 Q. Again, unit sales, are you able to provide

1 a reasonable estimate to the number of prosthetic
2 knees on a unit basis that Ossur sold in 2017 in
3 the United States?

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Q. Mr. DeRoy, are you familiar with K levels?

9 A. I am.

10 Q. What are K levels?

11 A. K levels are descriptors that are applied
12 to identify the activity level of an amputee.
13 Based on their K level they are grouped within K1,
14 K2, K3, or K4 based on the activities they're able
15 to perform from low activity, limited walking
16 capabilities to somewhat more walking capabilities
17 indoor primarily, somewhat outdoor, to outdoor and
18 variable speeds, being able to walk up and down
19 stairs, and then you have the last group which is
20 high active, sports, heavy duty type. So that's K1
21 through K4.

22 Q. Does Ossur sell prosthetic knees in the
23 United States for all K level amputees?

24 A. In the complete range with mechanical and

1 bionics, yes.

2 Q. Do you know which prosthetic knees Ossur
3 sells for K3 amputees in the United States?

4 A. Yes.

5 Q. Which prosthetic knees does Ossur sell to
6 K3 amputees in the United States?

7 A. We sell the Total Knee, the Mauch Knee,
8 the Rheo Knee, the Rheo Knee XC, and the Power Knee

9 Q. And of that group, the Total Knee and the
10 Mauch Knee are mechanical knees, correct?

11 A. Correct.

12 Q. And the Rheo, Rheo XC, and the Power Knee
13 all have microprocessors, right?

14 A. Correct.

15 (DeRoy Exhibit 3 was marked as
16 requested.)

17 BY MR. McCONNELL:

18 Q. Mr. DeRoy, you've been handed a document
19 labeled DeRoy 3. It's a document produced by Ossur
20 as part of the FTC's investigation in this case
21 with the Bates OSSUR-3P-00000096. If you could
22 take a moment and review DeRoy 3 and let me know
23 when you've completed your review, please.

24 (Witness reviewing document.)

1 BY THE WITNESS:

2 A. Yes.

3 Q. What is DeRoy 3?

4 A. DeRoy 3 is an overview of our mechanical
5 and bionic -- some of the bionic knee product line.

6 Q. Is the product portfolio identified in
7 DeRoy 3 current?

8 A. Yes. I would say so, yes.

9 Q. Do you know who created the document
10 reflected at DeRoy 3?

11 A. I don't know which person did, but I'm
12 assuming that it is a product manager that is
13 responsible for this.

14 Q. Is the product portfolio document
15 reflected at DeRoy 3 regularly updated at Ossur?

16 A. It is.

17 Q. About how often is the product portfolio
18 reflected at DeRoy 3 updated by Ossur?

19 A. When changes occur.

20 Q. And you said that updates are made by
21 product managers; is that right?

22 A. Yes.

23 Q. Which group within Ossur do product
24 managers work?

1 A. They work under the marketing department.

2 Q. Mr. DeRoy, do you ever refer to the
3 product portfolio reflected in DeRoy 3 in your work
4 at Ossur?

5 A. Yes.

6 Q. What is this document used for at Ossur?

7 A. This one in particular is used to educate
8 customers on the product portfolio of Ossur.

9 Q. Is it important for Ossur to educate
10 customers on the full range of products offered by
11 Ossur?

12 A. Yes.

13 Q. Why is it important?

14 A. To ensure that the right product is
15 selected for the right patient to ensure proper
16 outcome for the patient.

17 Q. I believe you testified to this already,
18 but just to make sure. Is the portfolio of
19 products reflected in DeRoy 3 current as of
20 September 2017 when Otto Bock acquired Freedom?

21 A. Yes. I forgot to mention the OP and OH
22 series earlier. Those were the ones acquired by
23 Medi, the four in the middle there.

24 Q. So the four mechanical knees --

1 A. Mechanical knees in the middle, yeah.

2 Q. -- in the moderately active user section
3 of the document?

4 A. Correct.

5 MS. SULLIVAN: Make sure you let him
6 finish before you speak because she can't get both.

7 THE WITNESS: Yes.

8 BY MR. McCONNELL:

9 Q. The product portfolio in DeRoy 3 is broken
10 into three different segments, correct?

11 A. Correct.

12 Q. The three segments are less active users,
13 moderately active users, and more active users,
14 correct?

15 A. That's correct.

16 Q. And do these segments roughly align with
17 the K levels you were just describing?

18 A. Yes.

19 Q. So K2 would be the less active user; is
20 that correct?

21 A. Correct, down to almost K1 for the first
22 few units, first two, then K2 after that, then K3
23 progressively to the higher end K3, then you get
24 into the K4.

1 Q. Just to make a clean record, when you
2 refer to the K3, those would be the knees in the
3 moderately active user segment on this document?

4 A. Correct.

5 Q. And the K4 knees are reflected in the
6 segment for more active users, correct?

7 A. Not entirely. You should look at it as a
8 progression where the more you go to the right of
9 the document the higher active the person will be.
10 Within K3 -- there's a bit of overlap. K3 reaches
11 through into the more active part as well and some
12 of those where you see the little icons underneath,
13 they go up to a running man. So they overlap from
14 moderate to high active. So they're not only for
15 high active. They would progress through the
16 different categories.

17 Q. So the little logos, there's a running
18 person that looks like there's a man with a roof
19 over his head. Is that a more sedentary person?

20 A. That's correct, a person that would be
21 mostly mobile within the house, limited outdoor
22 activity.

23 Q. And so it's fair to say that some of the
24 knees in the moderately active user segment of

1 DeRoy 3 could be the right choice for a K2 patient
2 or they could be the right choice for a K4 patient,
3 correct?

4 A. I would say usually not in both
5 directions, but the ones that are located to the
6 middle and the left are likely to be K3, K2. The
7 ones that are located from the middle to the right,
8 they're more in the K3 to K4.

9 Q. Are there instances where the Rheo Knee
10 can be used for a K2 patient that may eventually
11 get to a K3 level of activity?

12 A. Those are rather limited.

13 Q. But it does happen?

14 A. I would say we don't typically recommend
15 it.

16 Q. Why do you not recommend it?

17 A. It's based on the technology that we use
18 within the Rheo Knee. It suits itself better for
19 the moderate to higher active user because it
20 requires a certain level of voluntary control, the
21 ability of the patient to actually manage the leg,
22 which if you would put this on a lower active user
23 the chances would be that they lack the voluntary
24 control and therefore would not be optimizing their

1 functionality on that prosthesis.

2 Q. Within the more active user segment there
3 are four knees identified, the Total Knee, the
4 Mauch Knee, the Mauch Knee Plus and the Rheo Knee
5 XC, correct?

6 A. Yes.

7 Q. And the Total Knee, Mauch Knee, Mauch Knee
8 Plus are all mechanical knees correct?

9 A. That is correct.

10 Q. And the Rheo Knee XC is the advanced
11 microprocessor knee that you were describing
12 earlier, correct?

13 A. That is correct. If I can add to that.
14 The reason why -- even though there's no running
15 icon underneath that knee, the reason why it's in
16 that segment is because it's referring to high
17 active users in terms of day-to-day activity.
18 They're the ones walking a lot, they're the ones
19 that would walk up stairs, they're the ones that
20 might bike. They combine a broader variety of
21 activities than the typical moderate active user
22 would.

23 Q. Why don't all active amputees use the Rheo
24 Knee XC, do you know?

1 A. Well, there are many reasons why people
2 choose one over the other. The fact is that Rheo
3 Knee and Rheo Knee XC are positioned in two
4 different price classes which make the source of
5 pay an important factor to the decision. Plus also
6 it comes down to the ambition of the activity of
7 the patient. It's the duty of the prosthetist to
8 return them to the activity they had prior to the
9 amputation and that is also heavily involved or
10 influenced by the desire of that patient to
11 actually return to that activity level. So those
12 are all factors that play into the decision whether
13 it would be a Rheo Knee XC or Rheo Knee for that
14 matter.

15 Q. Or for a mechanical knee for that matter,
16 correct?

17 A. Or for a mechanical knee, yes.

18 Q. You could have an active person that based
19 on coverage and ability to pay or on activity and
20 lifestyle would prefer a Mauch Knee or Total Knee,
21 correct?

22 A. That is correct.

23 Q. Do you know for active users how many
24 units of the Total Knee, Mauch Knee, and Mauch Knee

1 Plus, how many units Ossur sold in 2017?

2 A. I wish I would have looked into the units
3 more. I'm usually more on the dollar side. I'd
4 have to make a rough guess there.

5 Q. Is it fair to say that Ossur sells more of
6 the mechanical knees for the active users than it
7 does the bionic knees?

8 A. Yes.

9 (DeRoy Exhibit 4 was marked as
10 requested.)

11 BY MR. McCONNELL:

12 Q. Mr. DeRoy, you've just been handed a
13 document identified as DeRoy 4. It is a document
14 with the Bates number OSSUR-OTTO-000000582. Could
15 you please take a moment and review the document
16 marked DeRoy 4 and let me know when you've
17 completed your review, please.

18 (Witness reviewing document.)

19 BY THE WITNESS:

20 A. Yes.

21 Q. What is DeRoy 4?

22 A. Prosthetic pricing, a price list of a
23 selection of prosthetic components.

24 Q. When you say "selection," do you mean

1 lower limb prosthetics?

2 A. Part of the lower limb prosthetics.

3 Q. Are there additional lower limb prosthetic
4 products that Ossur sells in the United States not
5 reflected in this document?

6 A. There are.

7 Q. What types of prosthetic products that
8 Ossur sells in the United States are not reflected
9 in DeRoy 4?

10 A. There is no mention of liners and there's
11 no mention of components. There's also no mention
12 of the customized prosthetic components.

13 Q. Is it fair to say that DeRoy 4 reflects
14 2017 prosthetic pricing for Ossur's prosthetic feet
15 and prosthetic knees that it sells in the United
16 States?

17 A. It states that it's 2017. So I would
18 assume that that's correct.

19 Q. Do you know who created this price list,
20 DeRoy 4?

21 A. This would typically be created by a
22 product manager.

23 Q. Is the price list reflected at DeRoy 4
24 regularly updated at Ossur?

1 A. It is.

2 Q. Do you know how often the price list is
3 updated at Ossur?

4 A. Typically annually.

5 Q. Is it fair to say that Ossur only changes
6 the list prices that it has for products sold in
7 the United States once a year?

8 A. Yes.

9 Q. Mr. DeRoy, I believe counsel's pointing
10 you to the reverse side of DeRoy 4 which contains
11 additional products, correct?

12 A. Correct. I thought we were talking about
13 OT-52. So that's why I didn't look at OT-53.
14 They're there. They are still missing the
15 component part of it, though.

16 Q. Do you know the distinction in DeRoy 4
17 between the blue rows and the white rows?

18 A. I actually do not.

19 Q. Do you have any responsibility for adding
20 information to the pricing chart reflected at DeRoy
21 4?

22 A. In my current position, I don't.

23 Q. In a previous position did you have
24 responsibility for input into prosthetic pricing in

1 the United States?

2 A. Into prosthetic pricing, but I was not
3 involved in the creation of the price list itself
4 specifically.

5 Q. Do you ever reference the 2017 prosthetic
6 pricing chart in your work at Ossur?

7 A. Not regularly.

8 Q. Why not?

9 A. Primarily because my interaction with
10 customers is fairly limited; and if it is
11 interaction with customers, conversations about
12 products and price are rather limited as well. It
13 would be more about a customer partnership type of
14 engagement.

15 Q. Does Ossur give the pricing chart
16 reflected at DeRoy 4 to its customers?

17 A. I'm not sure whether we do it in this
18 format, but the price list is made available to our
19 customers, yes.

20 Q. Under the "Product" column in DeRoy 4
21 there's a section for Flex-Foot products; do you
22 see that?

23 A. Yes.

24 Q. Are those products that Ossur purchased

1 from Flex-Foot around 2000?

2 A. Some of them are still there. I would say
3 that the majority of them are products that have
4 been developed at Ossur since the acquisition.

5 Q. Do you know whether any of the foot
6 products identified in DeRoy 4 are microprocessor
7 controlled?

8 A. One of them is.

9 Q. Which one is that?

10 A. That's the Proprio Foot.

11 Q. What K levels does Ossur market the
12 Proprio Foot to in the United States?

13 A. Primarily K3.

14 Q. Any other K levels besides K3?

15 A. No. It's specified within the coding that
16 K3 patients are the only patients that are eligible
17 for it, and the product specificities only really
18 support the higher impact in K4 that well.

19 Q. You've mentioned a few times the coding
20 for a product. Can you describe what you're
21 referring to?

22 A. Yes. It's actually on the list here as
23 well. So Medicare has a list of L codes and chart
24 codes that are describing the prosthetic

1 components, and those codes have a clarification, a
2 price level which defines the reimbursement level
3 for that particular product. So any product that
4 fulfills the criteria described by the codes can be
5 used for a specific patient population under the
6 reimbursement that is specified, which then varies
7 between states.

8 Q. And who in the supply chain receives the
9 reimbursement paid by Medicare or other payers?

10 A. Sorry. Who in the supply chain --

11 Q. Receives the reimbursement for prosthetic
12 products sold by Ossur.

13 A. That would be the prosthetist.

14 Q. Is a product's L code important to a
15 prosthetist?

16 A. Yes.

17 Q. Why is it important to a prosthetist?

18 A. It covers the cost of the product and it
19 covers the cost of the work, labor required to set
20 up the product for the patient and to provide the
21 basic training to get the patient acquainted with
22 the product.

23 Q. Is the reimbursement rate the only form of
24 income for a prosthetist?

1 A. I would say it's the main source of
2 income.

3 Q. So in your experience in this industry in
4 the United States a prosthetist would typically
5 select a product with a reimbursement level above
6 the price that it pays for the product, correct?

7 A. Yes.

8 Q. Do you know if there's a particular margin
9 that prosthetists try to achieve when they're
10 selecting a product for an amputee?

11 A. I would say that it varies a little bit.
12 Depends a little bit on the mindset of the
13 prosthetist. I think most of them have the mindset
14 to provide the best possible care with the best
15 possible clinical outcome and they will be more
16 compromising on how much margin that leaves them.
17 In some cases people have to choose the cheaper
18 product because the margin is more important to
19 them.

20 Q. There's a column here in DeRoy 4 labeled
21 "PDAC verified"; do you see that?

22 A. Yes.

23 Q. What does PDAC verified mean?

24 A. That means that the PDAC has reviewed the

1 product and has officially released a statement
2 that says that the coding as it is in the previous
3 column is applicable for that product.

4 Q. So does the PDAC verification provide a
5 level of comfort to the prosthetist that they will
6 get reimbursement for the product that they select
7 for an amputee?

8 A. It does.

9 Q. Do you know whether Freedom's foot and
10 knee products are PDAC verified?

11 A. I actually think a majority of them are
12 not.

13 Q. Do you remember reviewing that issue when
14 Ossur was considering purchasing Freedom in 2017?

15 A. That's correct, yes.

16 Q. And did Ossur have any concerns with the
17 fact that Freedom's products were not PDAC
18 verified?

19 A. Correct.

20 Q. What were those concerns?

21 A. The concern was that with increased
22 scrutiny on coding application that there was a
23 risk that there would be a retroactive action that
24 could result in customers having to repay

1 reimbursement fees they had received in the past if
2 it were to be proven that the product was not in
3 compliance with the description as it is found in
4 the L code.

5 Q. Specifically the Plie 3, do you know
6 whether the Plie 3 is PDAC verified?

7 A. It is not. To my knowledge it's not.

8 Q. Does Ossur have an opinion as to whether
9 the Plie 3 is an L5856 microprocessor knee?

10 A. We do.

11 Q. What is that opinion?

12 A. Let's say that we question slightly
13 whether that is the right positioning given the
14 type of technology that is being applied in the
15 Plie, but I guess the authorities have disagreed
16 with us because they've allowed it to be positioned
17 like that for the last decade.

18 Q. Why does Ossur question a little bit
19 whether the Plie 3 is actually an L5856
20 microprocessor knee?

21 A. The code describes the requirement as
22 being a stance and swing controlled microprocessor
23 knee and we are not entirely clear how the swing
24 portion of the knee is controlled by the

1 microprocessor, but it has been very difficult for
2 us to objectify the exact function of that knee to
3 be able to state that it does or does not count on
4 the active microprocessor function to do so and
5 Freedom has made their efforts to make clear in
6 their communication that it is fulfilling both
7 requirements.

8 Q. Do you know whether Ossur's salespeople
9 ever argue to prosthetists that the Plie 3 is not
10 an L5856 microprocessor knee?

11 A. We typically refrain from talking about
12 competitor's products and L code recommendations,
13 but I can't say that it never happened. It's out
14 of my knowledge.

15 Q. At the bottom of DeRoy 4 there's a
16 disclaimer that reads "The responsibility for
17 accurate coding lies solely with the healthcare
18 provider. Ossur assumes no responsibility or
19 liability for the provider's coding decisions." Do
20 you see that?

21 A. Yes.

22 Q. When there's a reference to "provider," is
23 that referring to a prosthetist?

24 A. That's correct.

1 Q. And why does Ossur feel the need to
2 disclaim responsibility or liability for the
3 prosthetist's coding decisions?

4 A. Basically because the prosthetist is the
5 one responsible. So it's a reminder to them about
6 their responsibility.

7 Q. I believe you testified earlier that
8 sometimes a prosthetist's coding decisions get
9 audited, correct?

10 A. I'm not sure whether I mentioned it, but
11 it is correct that they sometimes get audited, yes.

12 Q. Are you familiar with a RAC audit?

13 A. I am.

14 Q. What is a RAC audit?

15 A. A RAC audit is an event during which a RAC
16 auditor comes in and reviews the documentation
17 concerning a patient or multiple patients to
18 investigate whether the care provided was provided
19 correctly in line with the coding regulations and
20 requirements for that patient.

21 Q. And do RAC auditors -- are RAC auditors
22 typically more concerned with higher-priced
23 prosthetics than lower-priced prosthetics?

24 A. I would say that their focus has

1 definitely been on the higher-priced prosthetics.

2 Q. Have the frequency of RAC audits put
3 downward pressure on the sale of bionic products in
4 the United States from Ossur's opinion?

5 A. I would say that in 2012 and '13 that was
6 the case. I would say that that trend has kind of
7 reversed and that in '14, '15, '16, and '17 we
8 haven't seen that affect the bionic sales, and we
9 also have not heard too many comments about that
10 anymore either.

11 Q. Are RAC audits performed by Medicare?

12 A. They are outsourcing those, but they're
13 done and signed off, yes.

14 Q. Do private insurers also audit
15 determinations by prosthetists?

16 A. I'm sure they do. I don't know which form
17 they use to do so, but yes. I'd say that for
18 private payers the upfront verification is usually
19 more intense. So they do the work on the front end
20 before they approve, which makes the application
21 cycle quite a bit longer but which gives a little
22 bit more peace of mind once the approval is in.

23 Q. I'd like to turn focus to the -- to
24 Ossur's development of the Rheo Knee. Okay?

1 A. Yes.

2 Q. You mentioned earlier that Ossur acquired
3 Flex-Foot around 2000 and around that time
4 Flex-Foot was in development of a microprocessor
5 knee. Is that knee the Rheo?

6 A. It was an early start of the Rheo, yes.

7 Q. The same platform?

8 A. Same platform, yeah.

9 Q. And you said you acquired the technology
10 platform from Flex-Foot, correct?

11 A. That's right.

12 Q. When Ossur purchased Flex-Foot, Flex-Foot
13 was not making a microprocessor knee, correct?

14 A. No -- or that is correct, yes.

15 Q. Did Maynard Carkhuff work for Flex-Foot
16 when Ossur acquired it in 2000?

17 A. He did.

18 Q. And do you know whether Maynard Carkhuff
19 worked for Ossur for a time after the acquisition?

20 A. He did.

21 Q. Did Ossur terminate Maynard Carkhuff?

22 A. I'm actually not sure how the exit of
23 Maynard happened. I can't speak to that.

24 Q. But he nonetheless exited?

1 A. He exited either way. I don't know
2 whether it was voluntarily or whether he was
3 terminated, but he did exit the company, yes.

4 Q. And is it your understanding that Ossur
5 had a noncompete agreement with Maynard Carkhuff?

6 A. It was before my time so I can't speak
7 with certainty, but I would assume.

8 Q. And do you know -- after a period of time
9 do you know whether Maynard Carkhuff went on to
10 start Freedom Innovations?

11 MS. SULLIVAN: Sean, I've been flexible
12 here, but I don't see how this is covered by the
13 notice. You can ask, but he's only speaking from
14 his personal knowledge.

15 MR. McCONNELL: I'm just trying to lay --
16 that's fine if he wants to answer from personal
17 knowledge. I'm just laying a foundation for
18 questions related to the potential acquisition in
19 2017.

20 MS. SULLIVAN: If you know, you can
21 answer.

22 BY THE WITNESS:

23 A. What was the question again?

24 Q. Do you know whether Maynard Carkhuff was

1 involved in starting Freedom Innovations?

2 A. Yes.

3 Q. Was Maynard Carkhuff involved in starting
4 Freedom Innovations?

5 A. Yes.

6 Q. And do you know whether there were several
7 individuals involved in starting Freedom
8 Innovations that had previously worked for
9 Flex-Foot?

10 A. Yes. I believe there was one other person
11 that I'm aware of.

12 Q. Is that person Roland Christensen?

13 A. I believe it is, yes.

14 Q. Do you know around what time period
15 Freedom Innovations entered the U.S. market?

16 A. I'm going to guess 2003.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 A. That is correct.

22 Q. Based on your experience in the industry,
23 if a maker of prosthetics were to acquire Freedom's
24 current microprocessor knee platform, including the

1 Plie and the R&D project that it's undertaking, how
2 long do you think it would take for that prosthetic
3 maker to replicate the presence of Freedom in the
4 market?

5 MS. SULLIVAN: Objection, calls for
6 speculation, but go ahead and answer.

7 BY THE WITNESS:

8 A. That depends on where they're starting.
9 If they're starting from scratch, it would probably
10 take them four to five years.

11 Q. Not starting from scratch. I'm talking
12 about if a maker of prosthetics in the United
13 States acquired Freedom's microprocessor assets, so
14 the Plie 3 and the project that's in development
15 now, how long would it take to replicate Freedom's
16 presence in the microprocessor knee segment in the
17 United States?

18 MS. SULLIVAN: Same objection.

19 BY THE WITNESS:

20 A. Given that they acquire that presence, I
21 would say that they would get that presence.

22 Q. So nearly immediately?

23 MS. SULLIVAN: Same objection.

24 BY THE WITNESS:

1 A. I would say yes.

2 Q. The current version of the Rheo that
3 Ossur's selling in the United States is simply
4 called Rheo, correct?

5 A. That's right.

6 Q. And the earlier iteration was the Rheo 3,
7 right?

8 A. That's right.

9 Q. When was the current iteration of the Rheo
10 launched?

11 A. Towards the second half of 2017.

12 Q. What was the list price for the Rheo, do
13 you know?

14 A. It's in the range of \$19,500.

15 Q. Ossur targets the Rheo to K3 amputees
16 mostly, correct?

17 A. That's right.

18 Q. And some K2 patients can receive a Rheo,
19 correct?

20 A. We do not recommend K2 patients to receive
21 the Rheo and typically due to reimbursement
22 requirements they would not be eligible for a Rheo
23 Knee.

24 Q. Is it possible for an amputee with

1 sufficient financial backing to get a Rheo Knee
2 even if they're a K2?

3 A. Well, anyone can buy a Porsche, but I
4 would say the function is really important here.
5 Like I stated earlier, the fact that the Rheo Knee
6 has a specific technology, which is the
7 magnetorheologic technology -- I'll refer to that
8 as MR going forward.

9 Q. I'll try to do the same.

10 A. Like I explained earlier, it requires a
11 certain level of voluntary control of the patient
12 to be able to walk on that device, and we educate
13 our customers that they should select a patient
14 that has sufficient voluntary control to walk on
15 the Rheo and the majority of those users are in the
16 moderate K3, in the middle segment to the higher
17 segment of the K3 population.

18 Q. I appreciate that information, but I'm
19 just asking whether it's possible for some K2
20 amputees to receive a Rheo?

21 MS. SULLIVAN: Objection, asked and
22 answered.

23 THE WITNESS: Should I answer again?

24 MS. SULLIVAN: You can answer.

1 BY THE WITNESS:

2 A. If they were to do so, yes. Would they be
3 successful, question mark.

4 Q. And it's possible for some K4 amputees to
5 use Rheos as well, correct?

6 A. Yes. That is a more likely scenario.
7 However, they would have to use the knee as
8 described in the earlier list we reviewed in low to
9 moderate impact. So that doesn't necessarily refer
10 to K2 or K3. That refers to are they walking very
11 fast, are they carrying loads, are they running,
12 then they fall outside of the scope in terms of low
13 to moderate impact. It's the typical day-to-day
14 activities, those are supported, that's where the
15 Rheo knee comes in.

16 Q. Do you know when Ossur first introduced
17 the Rheo knee to the U.S. market?

18 A. I believe it was 2004.

19 Q. The Rheo was Ossur's first microprocessor-
20 controlled knee sold in the United States, correct?

21 A. That's right.

22 (DeRoy Exhibit 5 was marked as
23 requested.)

24 BY MR. McCONNELL:

1 Q. Mr. DeRoy, you've been handed a document
2 labeled DeRoy 5 with the Bates OSSUR-OTTO-00000863.
3 It's a Gate 2 business case review. If you could
4 take a moment and review this document and let me
5 know when you've completed your review, please.

6 (Witness reviewing document.)

7 BY THE WITNESS:

8 A. Okay.

9 Q. Mr. DeRoy, what is the document that's
10 been labeled DeRoy 5?

11 A. So it's a Gate 2 document, which is part
12 of the Gate stage process we have in R&D. In this
13 case Gate 2 is a business case review.

14 Q. Does Ossur use business case reviews for
15 all product development?

16 A. We do.

17 Q. Does Ossur use gates to signify product
18 development stages?

19 A. We do.

20 Q. How many gates does a product typically go
21 through at Ossur before it's commercialized and put
22 on the market?

23 A. It will go through six gates. Wait. Yes,
24 six.

1 Q. Do you know who created the business case
2 reflected at DeRoy 5?

3 A. Yes. It's a combined effort by the people
4 that are on the front page of this document.

5 Q. I won't make you list all the names, but
6 do those individuals that created DeRoy 5 work in a
7 particular department at Ossur?

8 A. Yes. We have project management,
9 engineering, product management, we have
10 manufacturing engineering, we have medical office,
11 and then we have IP.

12 Q. When was the business case Gate 2 at DeRoy
13 5 created?

14 A. In August of 2015.

15 Q. How often are business cases updated at
16 Ossur for new products?

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Q. Do the individuals identified on the cover
23 of DeRoy 5 provide the updates to the business case
24 as they're developed by Ossur?

1 A. They do.

2 Q. Do you have any responsibility for adding
3 information to business cases for new products at
4 Ossur?

5 A. In this particular case I was an approver
6 and responsible for the approval of the -- of the
7 meeting and therefore the content of this meeting.

8 Q. Is it fair to say that you approved of
9 this document?

10 A. I did.

11 Q. What are business cases like the one
12 reflected at DeRoy 5 used for at Ossur?

13 A. To identify what is needed to develop, to
14 identify what the opportunity is, and to use the
15 information to also prioritize between projects.

16 Q. Do business cases at Ossur typically
17 reflect accurate market information?

18 A. Well, accurate to our knowledge given that
19 there's very little information out there. So this
20 is in a way the best guess of the internal
21 marketing team and the business analysts to dive
22 into the specific segment that is under review.

23 Q. So the market information in business case
24 reviews prepared by Ossur is accurate to the best

1 of Ossur's ability?

2 MS. SULLIVAN: Objection, asked and
3 answered.

4 BY THE WITNESS:

5 A. I would say yes.

6 Q. Is it important to reflect the best
7 possible market information in business case
8 reviews at Ossur?

9 A. I would say so, yes.

10 Q. If you could turn, Mr. DeRoy, to 867,
11 slide 5 that ends in Bates 867, please.

12 A. Yep.

13 Q. At the top of page 5 of DeRoy 5 it
14 indicates that the Rheo Knee 3 was launched in
15 January 2014, correct?

16 A. Yes.

17 Q. And it indicates that Ossur gained market
18 share in the MPK market with the product; do you
19 see that?

20 A. That's correct, yes.

21 Q. Do you know which competitors Ossur gained
22 market share from when it launched the Rheo Knee 3
23 in 2014?

24 A. It's very difficult to say how much of

1 this was competitive gain versus how much of it is
2 market growth, but I would say that there was
3 competitive gain from probably the Plie and the
4 C-Leg at the time and then some additional growth
5 from new patients.

6 Q. When you say "market growth," do you mean
7 amputees switching from mechanical knees to
8 microprocessor knees?

9 A. Yes. Or a higher acceptance for new
10 amputees to actually get the microprocessor knees
11 than in the previous years.

12 Q. This information reflected in slide 5 of
13 DeRoy 5 indicates that the Rheo Knee 3 was at a new
14 price point in the MPK segment, correct?

15 A. That is correct.

16 Q. What price did Ossur put the Rheo Knee 3
17 at when it launched in January 2014?

18 A. So list price we were in the range of
19 \$19,000, and the number you see here even though
20 it's not mentioned is the average sales price of
21 the device.

22 Q. And I believe the C-Leg 4 is next to the
23 Rheo 3 in slide 5, correct?

24 A. That's correct.

1 Q. Do you know what the average sales price
2 for the C-Leg 4 was at this time in 2015?

3 A. We don't know exactly what it was, but
4 based on customer feedback we believe that we were
5 in the same range, around \$16,500 average sales
6 price.

7 Q. So the Rheo 3 and the C-Leg 4 were about
8 the same average sales price in 2015, correct?

9 A. To the best of our knowledge, yes.

10 Q. And then the Plie is down at the far left
11 of the page, the continuum on slide 5 at around
12 \$14,000, correct?

13 A. That is correct.

14 Q. Are there any other -- were there any
15 other microprocessor knees being sold in the United
16 States around this time in 2015?

17 A. Yes.

18 Q. What products would have been on the
19 market in 2015?

20 A. So at that time there was the Orion and
21 there was the Nabtesco. I believe Nabtesco had
22 entered the market at that time.

23 Q. Would that be the Allux product?

24 A. This is -- Nabtesco is the company name as

1 well and that's the Asian supply product.

2 Q. Just so I have it clear for the record,
3 Blatchford Endolite makes the Orion, correct?

4 A. Correct.

5 Q. And Nabtesco makes the Allux, correct?

6 A. Yes.

7 Q. Do you know --

8 A. I'm not sure about the name of the
9 product.

10 Q. There may have been an earlier Nabtesco?

11 A. I'm not sure what it was called at the
12 time. Like I said, I'm not sure whether it was
13 there at the time. They're distributing it in the
14 U.S. today, but I'm not exactly sure what the
15 status was in 2014.

16 Q. Where would the Endolite Orion product be
17 on the continuum reflected at slide 5?

18 A. I would say that it's likely to be more
19 towards the Plie position. Possibly in between
20 Plie and Rheo and C-Leg, but I would say probably
21 competitively positioned against the Plie.

22 Q. And if Nabtesco's microprocessor knee had
23 entered the market around this time in 2015, where
24 would that product be on the continuum reflected on

1 slide 5?

2 A. Similar price range I would say.

3 Q. Next to the Plie --

4 A. Next to the Plie, yeah.

5 Q. If you could turn to the next page,

6 Mr. DeRoy, there's a graph for Rheo 3 unit sales in
7 the Americas on the bottom right; do you see that?

8 A. Yep.

9 Q. Can you tell me what that graph depicts?

10 A. So the bottom right is showing us the
11 sales numbers 2014-2015, the blue line is showing
12 us 2014 versus the red line 2015, and it basically
13 shows us the impact we believe the C-Leg 4 launch
14 in the U.S. had on our product launch where you see
15 in Q1 we still had good growth coming off of a
16 launch in I believe Q2 of 2014 and in the
17 consecutive quarters we started seeing a
18 significant drop in sales.

19 Q. Just so I'm clear, the numbers on the
20 left-hand side of the column -- of the graph on the
21 Y axis, do you know what those units are measured
22 in?

23 A. Those are units.

24 Q. Is it hundreds? Is it thousands? Do you

1 know?

2 A. Actually I'm not entirely sure with the
3 graph here. I would think that this is one year's
4 worth, 2014-2015 entirely, and these are units,
5 just units per month.

6 Q. Understood. So from the third month of
7 2015 to the fifth month of 2015 Rheo sales went
8 from close to 100 to below 60, correct?

9 A. That is correct, yes.

10 Q. And that was during the time that the
11 C-Leg 4 was introduced, correct?

12 A. That's right.

13 Q. Do you know when the Plie 3 was
14 introduced?

15 A. That was quite a bit prior to this
16 picture. I don't know exactly what year it was
17 introduced.

18 Q. Would it be fair to say it was around
19 September of 2014?

20 MS. SULLIVAN: Objection. Go ahead.

21 BY THE WITNESS:

22 A. Which Plie are you referring to?

23 Q. Plie 3.

24 A. Plie 3, yes. I'd say that's probably

1 accurate.

2 Q. Did the Plie 3 have any impact on Rheo's
3 sales in the United States?

4 A. I don't have that data in front of me, but
5 I guess, you know, looking at the impact of C-Leg 4
6 I would guess that had a bigger impact on our
7 business. I think it's important to know as well
8 that C-Leg 4 came to market as a microprocessor
9 knee that was waterproof. That's what the Plie had
10 claimed as a unique niche up until then. Our knee
11 did not have that at that time. So part of the
12 effect that we're seeing here is attributed to the
13 fact that C-Leg 4 had the feature that at that time
14 a lot of people were looking for and that was the
15 result. To the best of my recollection, I don't
16 recall a significant additional drop when the Plie
17 3 was launched.

18 Q. In fact, it looks here like Rheo's sales
19 went up after the Plie 3 was launched according to
20 this chart, correct?

21 A. I think it's dangerous to look at a trend
22 by month because different months -- the more you
23 get to the end of a quarter you always see a bit of
24 a push. It's related to how reimbursement is

1 approving certain documents towards the end of a
2 time period. Towards the end of a year you'll see
3 it as well. So that's why the blue line here as
4 you see it for the full year 2014 it tends to go up
5 and down somewhat towards the end of quarters, but
6 it definitely trends towards the higher end of year
7 performance.

8 MS. SULLIVAN: Is this a good time for a
9 break? We've been going for more than an hour.

10 MR. McCONNELL: Sure.

11 (A short break was had.)

12 BY MR. McCONNELL:

13 Q. Mr. DeRoy, turning back to slide 6, I
14 believe, of DeRoy 5.

15 A. Yes.

16 Q. Just to finish up the questioning. So the
17 little legend to the left of the graph that we've
18 been talking about titled "Americas" indicates that
19 the Rheo had Q1 2015 growth of 20 percent, correct?

20 A. On the bottom here, Q1 growth 20 percent,
21 yes. Correct.

22 Q. And is that accurate, to the best of your
23 knowledge?

24 A. To the best of my knowledge, yes.

1 Q. And Q1 2015 is after the Plie 3 was
2 introduced in September of 2014, correct?

3 A. Actually I don't recall the exact launch
4 of that product, but I do recall that C-Leg 4
5 followed the Plie 3 quite rapidly. So to the best
6 of my knowledge, yes, that's post the Plie 3 launch
7 period.

8 Q. The Plie 3 had the waterproof technology
9 that you referred to as being important to amputees
10 also, correct?

11 A. Correct.

12 Q. Plie 3 is not mentioned on the graph --
13 either graph referenced on slide 6, correct?

14 A. That's correct.

15 Q. If you could turn, Mr. DeRoy, to the page
16 that ends with Bates 871, please.

17 A. Yes.

18 Q. This slide is titled "Targeted market
19 segment"; do you see that?

20 A. Yes.

21 Q. And then there's a name underneath that
22 "Hildur Einarsdottir."

23 A. Do you want me to repeat that for you
24 correctly?

1 Q. Yes, sir.

2 A. Hildur Einarsdottir.

3 Q. Thank you. Is it fair to say that that
4 individual authored this slide of the presentation?

5 A. Since her name is on it, it means she
6 presented it and it's very likely that she wrote it
7 as well, yes.

8 Q. In the top half of slide 9 there's a
9 section called "Target end users"; do you see that?

10 A. Correct.

11 Q. And then there's information for the Rheo
12 Knee XC and the Rheo Knee 3 upgrade, correct?

13 A. Right.

14 Q. And next to "Rheo Knee 3 (upgrade)" it
15 reflects "Current Rheo Knee focus group in addition
16 to 'the ladders' (price sensitive, C-Leg lovers,
17 Plie users, et cetera)"; do you see that?

18 A. I do.

19 Q. Do you know what was meant here by the
20 term "price sensitive"?

21 A. Yes. So as it shows in the previous
22 slides of this deck, there were two categories in
23 the main group of microprocessor knees, price
24 sensitive ones are the ones that are more towards

1 that segment of the Plie and then the ones that
2 weren't noted were the Orion at that time. So
3 those would be the one categorized in the price
4 sensitive group.

5 Q. And for the price sensitive group are
6 those products more susceptible to substitution to
7 mechanical knees?

8 A. I would not say that. I don't think
9 that's a correct statement. I think price
10 sensitive basically means that either the user
11 doesn't have the financial strength to pay for the
12 additional out-of-pocket required amount or they're
13 just dependent on a payer that is not as
14 beneficial, which could be a Medicaid patient, for
15 instance, or a private payer where in their
16 agreement it would state they have limited money
17 available for that type of prosthetic, but they're
18 not necessarily more likely to transition to a
19 mechanical knee.

20 Q. So it's more broad than that. It's any
21 amputee patient that lacks the financial backing
22 would be more likely to switch to a mechanical
23 knee, correct?

24 MS. LAO: Objection, mischaracterizes the

1 witness's testimony.

2 BY THE WITNESS:

3 A. No, I wouldn't say that. I think people
4 that are eligible for microprocessor knees will
5 typically get the microprocessor knees. And I want
6 to remind you of the previous part of the
7 conversation that the person that is at the
8 receiving end of the fee is not the patient, it's
9 the prosthetist. So the decision on margin is not
10 solely made by the patients. Some practitioners
11 consider their services better than others and
12 therefore they want to get a bigger margin and for
13 some of them they get that through the product they
14 select. Others will just have the personal fee of
15 the patient be higher.

16 Q. I just want to focus in on the group we
17 were talking about price sensitive. So I guess I
18 spoke incorrectly referring to patients. It would
19 be price sensitive prosthetists; is that right?

20 A. Price sensitive prosthetists, correct, and
21 that is typically related to patients that have
22 limited means to acquire that type of technology.
23 So in this particular picture we're focusing on
24 microprocessor-controlled knee groups. We're not

1 taking into consideration any mechanical knees.

2 Q. But is it fair to say that for patients
3 that go to a prosthetist that do not have coverage
4 for a microprocessor knee, whether they're in the
5 K3 or K4 group, they could be prescribed a
6 mechanical knee, correct?

7 A. It is possible that patients because of
8 financial means would only have access to
9 mechanical knees, correct.

10 Q. And some other patients that have access
11 to financial backing, as we discussed earlier, may
12 prefer a mechanical knee to a microprocessor knee,
13 correct?

14 A. I would say that those are limited cases,
15 but it does happen. Those would typically be cases
16 where patients have been using mechanical knees for
17 a very long time, they might want to try the latest
18 update on the microprocessor knee side, and then
19 decide that it is still not where they want it to
20 be and choose a mechanical knee.

21 Q. If you could turn, Mr. DeRoy, to slide 11,
22 please.

23 MS. SULLIVAN: Sean, the slides aren't --
24 oh, I see. Page 11 which is Bates No. 873?

1 MR. McCONNELL: Yes. Sorry.

2 MS. SULLIVAN: Okay.

3 BY MR. McCONNELL:

4 Q. Mr. DeRoy, could you please describe the
5 graph at slide 11 at the Bates that ends with 873,
6 please.

7 A. Yes. So this is a value map which is how
8 we position our product against competitive
9 products based on price on the one axis and the
10 value, that is, the perceived value to the patient
11 or the practitioner, the prosthetist that puts the
12 product in place.

13 Q. According to the map on slide 11, Ossur
14 positioned the Rheo Knee 3 closest to the C-Leg 4,
15 correct?

16 A. That is correct.

17 Q. And the Rheo Knee 2 is positioned between
18 the Plie and the C-Leg 4 on the map on slide 11,
19 correct?

20 A. On the level of value it is positioned
21 there, yes, and that's the value to the patient.
22 So that's the functional value that it brings to
23 the patient.

24 Q. So it's fair to say that the Rheo Knee 2

1 provided more value to the patient than the Plie
2 according to Ossur in this value map on slide 11?

3 A. I would say that the feedback we received
4 from patients and practitioners was that they would
5 select the Rheo Knee 2 if there was a need of a
6 more advanced type of functionality, yes.

7 Q. Earlier we discussed the Orion that's sold
8 under the Endolite brand. Where would Ossur
9 position the Endolite Orion on the map reflected on
10 slide 11?

11 A. I would say I'll speak from my personal
12 experience as a clinician. I would say it would be
13 in the same range as the Plie both on price level
14 as on the value level.

15 Q. We also discussed Nabtesco and the
16 microprocessor knee it may or may not have
17 introduced to the market yet at this time period,
18 but where would Ossur have put the Nabtesco
19 microprocessor knee on the value map on slide 11?

20 A. I would expect that the analysis behind
21 where this knee ends up with functionality measures
22 that we evaluate, how quickly does it respond to
23 gait changes, how supportive is it and all that, I
24 would expect it to be on the left side of the Plie,

1 which means in terms of value and function to the
2 user it is slightly less functional than the Plie.

3 Q. Do you know about where it would be on the
4 price axis, the Nabtesco product?

5 A. The Nabtesco product would be in a similar
6 price range. Possibly slightly lower, but
7 nothing -- it's probably a marginal difference.

8 Q. From the Plie 3?

9 A. From the Plie, yes.

10 Q. Mr. DeRoy, if you could turn to slide 23
11 of DeRoy 5, which is at the Bates number that ends
12 885, please.

13 A. Yes.

14 Q. This slide reflects the pricing strategy
15 for the Rheo Knee 3, correct?

16 A. That is the title, yes.

17 Q. And the bullet near the top reads "Need to
18 have a product competing with the mainstream MPK
19 products at the current price level, no room for
20 price play"; do you see that?

21 A. That's right, yes.

22 Q. At this point when this document was
23 created what did Ossur consider to be the
24 mainstream MPK products?

1 A. The mainstream would be the C-Leg, the
2 Plie, the Orion at that time.

3 Q. The Rheo as well?

4 A. The Rheo, of course, yes.

5 Q. And what about the Nabtesco microprocessor
6 product, is that considered a mainstream MPK
7 product?

8 A. Again, I don't remember whether at that
9 time it was there, but I would say that even though
10 it's not as much used I would say that it is a
11 mainstream microprocessor.

12 Q. At the end of that statement in the
13 parentheses it reads "No room for price play"; do
14 you see that?

15 A. Yes.

16 Q. Do you know what that's in reference to?

17 A. It is in reference -- it's a discussion
18 that we always have. As you can see in the value
19 map, we believe we're adding value to the product
20 and we always ask ourselves the question does that
21 value justify any increase in price, is there any
22 opportunity for us to get more return on investment
23 on the development. Within the segment of the
24 microprocessor knees list price wise they're all at

1 the same level and the reimbursement of them is all
2 at the same level as well at a certain margin
3 above. So in order for us to position a knee
4 significantly higher than the current price level
5 as it is stated here we would be eating into the
6 margin for the prosthetist, and we would feel that
7 we would probably lose the opportunity to be
8 selected over some of the competitive products.

9 (DeRoy Exhibit 6 was marked as
10 requested.)

11 BY MR. McCONNELL:

12 Q. Mr. DeRoy, you've just been handed a
13 document DeRoy 6, which is a 2015 product line plan
14 for bionic knees with the Bates
15 OSSUR-OTTO-00000624. If you could please review
16 DeRoy 6 and let me know when you've completed your
17 review, please.

18 (Witness reviewing document.)

19 BY THE WITNESS:

20 A. Yes.

21 Q. Mr. DeRoy, what is the document reflected
22 at DeRoy 6?

23 A. So it's called a product line plan, which
24 is basically a forward-looking plan that describes

1 what the product vision for the next years to come,
2 future development, if you will. In this
3 particular case we're looking at bionic knees.

4 Q. And when Ossur refers to bionic knees,
5 it's referring to knees that have microprocessor
6 control, correct?

7 A. That is correct.

8 Q. Does Ossur use product line plans for all
9 of its prosthetic products?

10 A. We do.

11 Q. The same woman is identified as the author
12 of this document as presented in the previous
13 slide. Can you pronounce her name for me, please.

14 A. Hildur Einarsdottir.

15 Q. And she was the global product manager I'm
16 assuming for bionic knees in 2015; is that right?

17 A. That's right.

18 Q. Does she still have the same role at
19 Ossur?

20 A. She does not.

21 Q. What is her current role at Ossur?

22 A. Her current role is VP of R&D operations
23 and strategy.

24 Q. It looks like from the cover of the

1 document that DeRoy 6 was last updated in 2015.
2 I'm not sure if it's using European calendaring or
3 U.S. calendaring, whether it's September 12, 2015
4 or December 9, 2015. Do you know?

5 A. I can't answer with certainty, but I'm
6 assuming it's likely that it is December.

7 Q. If you could turn, Mr. DeRoy, to page 3 of
8 DeRoy 6 that ends with Bates 626, there's a section
9 3.2, "Sales performance"; do you see that?

10 A. Yes.

11 Q. And the top paragraph reads "It has proven
12 challenging to maintain Rheo knee growth in Q2
13 2015, specifically in the Americas where C-Leg 4
14 was introduced in April which has notably affected
15 sales. Slower reimbursement payments are also
16 affecting the overall MPK market." Do you see
17 that?

18 A. Yes.

19 Q. So the introduction of the C-Leg 4 we
20 talked about a little bit earlier with DeRoy 5,
21 right?

22 A. Correct.

23 Q. And then there's this other performance
24 indicator slower reimbursement payments; do you see

1 that?

2 A. I do.

3 Q. Do you know what that is in reference to?

4 A. So what we are noticing or what we were
5 noticing in 2015 is that it took a longer time for
6 the payer to actually approve a microprocessor-
7 controlled knee. So they were kind of -- the
8 dossier, the documents were probably lying around
9 and that kind of stagnated in a way a little bit
10 the actual approval. Therefore that second quarter
11 trend that you saw going down, which is the one
12 that we're referring to here, we allocated that to
13 the fact that the C-Leg 4 was launched, a
14 competitive product, and to the fact that there was
15 just a slowness to how product was approved. We've
16 seen that historically that happens, certain
17 quarters it's somehow not microprocessor knee time,
18 and then we see it catch up the next quarter or we
19 see it catch up towards the end of the year.

20 Q. So what you just referred to, the slower
21 reimbursement payments, is it fair to say that that
22 impacts all microprocessor knees in the United
23 States?

24 A. We would expect so, yes.

1 Q. And when there's slower reimbursement for
2 payments for microprocessor knees, is there
3 switching by prosthetists to mechanical knees?

4 A. Not necessarily. In this case they have
5 applied for one, it's just not been approved. So
6 typically they'll just wait it out and see until
7 they get the confirmation and then they will
8 acquire the prosthesis.

9 Q. If you could turn, Mr. DeRoy, to page 55
10 ending with Bates 628, please.

11 A. Yes.

12 Q. There's a section 4.2 for "Reimbursement"
13 and 4.2 on "Americas"; do you see that?

14 A. Yes.

15 Q. And there's a pie chart that reflects U.S.
16 payers prior to 2014; do you see that?

17 A. I do.

18 Q. And can you just describe what that graph
19 depicts?

20 A. So this one basically shows you how the
21 products are being paid for, who is the payer
22 between private pay, Medicare, Medicaid, and then
23 uninsured. I'm going to read here for a second
24 because I'm not sure that this is actually specific

1 to the microprocessor knee segment. I believe this
2 description is to the overall prosthetics business.

3 (Witness reviewing document.)

4 BY THE WITNESS:

5 A. Yes. There's more specification on
6 microprocessors on the next one, but I do believe
7 this graph, to the best of my knowledge, is a
8 general picture.

9 Q. There's a section on page 5 labeled
10 "Medicare"; do you see that?

11 A. Yes.

12 Q. It reads "Due to reimbursement scrutiny
13 and preauthorized payment requests by Medicare in
14 some areas in the United States customers have been
15 treading carefully when purchasing K3 products, in
16 particular bionic products"; do you see that?

17 A. Yes.

18 Q. Do you know what that's in reference to?

19 A. So this is in references to the chart that
20 is on the back. So it's showing basically that
21 there was increased scrutiny, especially in 2012
22 and '13, where there was a change in the way of
23 requirements to get a microprocessor knee approved.
24 Historically it was almost sufficient to have a

1 prescription, to have a basic request from the
2 prosthetist to get the approval. There was an
3 increase of requests for evidence that this
4 particular patient requires that type of product.
5 So there was a period of time during which the
6 prosthetists kind of shyed away of doing that extra
7 work because they were concerned and it was
8 coinciding with the RAC audits that if they didn't
9 do the work properly that might have come back to
10 them in the future and they might have to repay
11 some of the fees they received, which was the case
12 in 2012 and '13. That was a bit of an upset in the
13 Americas market. So that's what this one is
14 referring to.

15 Q. When that happened what happened with --
16 to prosthetists -- did that effect from Medicare
17 have in impact on prosthetist's choice from what
18 prosthetic products it was choosing?

19 A. Yes. I think it's fair to say that in the
20 years 2012 and '13 -- and if you turn to the next
21 page you'll see it in the graph. 2009, '10, and
22 '11 were the high years on bionics. That's when
23 the increased scrutiny came about, that's when the
24 RAC audits hit, and that's when you see a

1 significant drop in units of the recommended codes
2 which are noted here to be microprocessor knee
3 recommended codes. So this trend here in the years
4 2012 and 2013 coincided with a slight uptick on the
5 mechanical side, but it also coincided with a delay
6 of people requesting a renewal of their existing
7 microprocessor knee.

8 So it's fair to say that there was some
9 drop-off to mechanical, but generally speaking,
10 that is not the ideal scenario for a patient,
11 especially if they already have a knee. So if they
12 apply for it, they will then decide to use their
13 knee longer and just wait through the time required
14 to get the knee approved. So I would say that this
15 had an effect on the market as a whole.

16 This was also a period where some
17 prosthetists that -- we have to remember that they
18 have a technical background more than a clinical
19 background. The Medicare requirements turned from
20 describing a technical product to documenting the
21 clinical need of a patient. So there were
22 prosthetists that did not feel themselves to be
23 well enough educated, the older generation
24 primarily, to make that particular switch. They

1 might have been the ones that decided initially to
2 try to solve that with a switch to mechanical
3 products, but eventually we saw that quite a few of
4 those ended up selling their business, not in the
5 least to Hanger, where then it became part of a
6 bigger organization that was better armed against
7 the scrutiny of Medicare, better armed against RAC
8 audits, and with that was able to support the
9 utilization for microprocessor knees where needed.

10 So I'd say the trend you see here, 2012,
11 2013, clearly indicates that there was a drop in
12 microprocessor knees, the trend on the mechanical
13 knees had a slight uptick, but the years to follow
14 we saw that it recovered. So that's where the
15 slowdown of getting the knees approved and the
16 confidence growing plus also the bigger companies
17 having the confidence to continue to apply for
18 those types of knees resulted in a normalization.

19 Q. So the impact of Hanger on the market was
20 that they supported an increase in the use of
21 microprocessor controlled knees?

22 A. I would say Hanger contributed to the
23 normalization of it because they were in a
24 better -- they were better able to meet the new

1 requirements proposed by Medicare in terms of
2 information and evidence submission to get it
3 approved for the patient.

4 Q. What impact does Hanger have on Ossur's
5 ability to sell prosthetic products in the United
6 States?

7 MS. SULLIVAN: Objection, ambiguous. You
8 can answer if you understand.

9 BY THE WITNESS:

10 A. Can you repeat, please.

11 Q. Sure. What impact does Hanger have on
12 Ossur's ability to sell prosthetic products in the
13 United States?

14 A. I would like to generalize it a little bit
15 and talk about the impact Hanger has had on the
16 type of innovation like bionics over the years if
17 that's relevant in the answer.

18 Q. Sure.

19 A. So Hanger has done a great job in the
20 early stage of microprocessor knees to fight the
21 fight with payers to make sure that the patient
22 that is eligible actually gets the knee. So the
23 effect that Hanger has to the overall prosthetics
24 business and has had to the overall prosthetics

1 business is to support the tradeup in technology as
2 it has gone over the years.

3 Q. So if there's a new technology that comes
4 to the market, Hanger can support that technology
5 and help it gain traction in the marketplace; is
6 that right?

7 A. Hanger would be in a better position to
8 take that on. That doesn't mean they do it for
9 every supplier equally, but they are definitely
10 better equipped given the economies of scale they
11 have, given the team they have to support
12 reimbursement application.

13 Q. Due to its size is Hanger also able to get
14 better discounts from prosthetic suppliers in the
15 United States?

16 A. Yes. Just a volume versus price logic,
17 yes.

18 Q. Just to clarify on page 5, the final
19 sentence of the paragraph under "Medicare," it
20 reads "Medicare data on main microprocessor knee
21 codes from 2015 to 2013 below clearly demonstrate
22 the decrease in usage of those codes, specifically
23 looking at L5856, supporting indications on more
24 careful purchases"; do you see that?

1 A. I see that.

2 Q. The L5856 is microprocessor-controlled
3 swing and stance, correct?

4 A. That's correct.

5 Q. So during this time period, 2005 to 2013,
6 there was a decreased usage in the L5856 code for
7 prosthetic knees, correct?

8 A. Actually between 2005 and 2011 there was a
9 significant uptick and it is after 2011 to 2012 and
10 2013, those two years specifically, and at the time
11 where this report was made the 2014 data was not
12 available yet and obviously 2015 data was not
13 available either, but the trend of decrease is
14 limited between 2011 and 2013 and after that it
15 started picking up again and normalizing.

16 Q. Do you know how the market has adjusted to
17 the current data in 2017?

18 A. I have not seen the latest data. I
19 haven't seen any 2017 data yet because it's not
20 available, but the 2016, 2015, and 2014 data did
21 show show a normalization back to -- I'm not sure.
22 I would almost say as high as it where it used to
23 be, but definitely back into that direction. So
24 the trend has definitely turned around again.

1 Q. On page 7 of DeRoy 6 at Bates 630 there's
2 a section 4.3, "Competitive analysis"; do you see
3 that?

4 A. I do.

5 Q. In the first paragraph it reads "Main
6 competitors in the MPK market have been Otto Bock
7 with C-Leg and Genium"; do you see that?

8 A. Yes.

9 Q. At the end of that paragraph it reads
10 "According to market intelligence, Otto Bock's MPK
11 sales were suffering in 2014 which was mostly owed
12 to the fast uptake of Rheo Knee 3"; do you see
13 that?

14 A. I see that.

15 Q. Do you agree with that statement?

16 A. That was our finding at the time, yes.

17 Q. Do you have any --

18 A. We don't have any hard data to support
19 that given that there is no hard data available on
20 that competitive type of Intel, but this is a
21 combination of hearsay, talking to customers, and
22 basically seeing certain customers just switch over
23 the business in favor of the Rheo Knee 3 at the
24 time.

1 Q. My understanding of the industry is that
2 several of the manufacturers are privately held
3 companies. So it makes it difficult to know
4 exactly how many units they're selling, correct?

5 A. Exactly.

6 Q. So this intelligence that's reflected in
7 DeRoy 6 is the best intelligence that Ossur can put
8 together given the limitations in the industry,
9 correct?

10 A. Exactly. We're counting on expert
11 opinions of people out in the field.

12 Q. And also does Ossur use a calculation
13 based on sales to Medicare to extrapolate to the
14 entire U.S. market?

15 A. That's one way of estimating how the
16 market is progressing, but Medicare is only a part
17 of the overall case. So yeah.

18 Q. And then at the bottom of page 7 it reads
19 "In April 2015 Otto Bock announced the launch of a
20 new generation of the C-Leg, C-Leg 4, priced around
21 the same level as the previous C-Leg. The main
22 focus has been on the weatherproof features of the
23 product which are hurting Rheo Knee 3 sales already
24 and impacting the market focus very notably." Do

1 you see that?

2 A. I see that.

3 Q. Do you agree with that statement?

4 A. That was our finding at the time, yes.

5 Q. Mr. DeRoy, if you could please turn to
6 page 18, which is the page with ending Bates 641,
7 please.

8 A. Yes.

9 Q. There's a section 6, "Bionic knees product
10 line plan," 6.1, "Product line opportunities"; do
11 you see that?

12 A. I see that.

13 Q. The next to last paragraph, if you could
14 read that, please. It has to do with Ossur's
15 mechanical knees, please.

16 A. I see that.

17 Q. Could you take a moment and read it,
18 please.

19 (Witness reviewing document.)

20 BY THE WITNESS:

21 A. Yes.

22 Q. Mr. DeRoy, do you know why in this
23 document that has to deal with bionic knees product
24 line plans there's a section on mechanical knees?

1 A. Well, it is the overall knee market and
2 there is an opportunity to upgrade people from
3 mechanical knees over to bionic products. As
4 described in this paragraph, the question at hand
5 was whether it would be beneficial for us to bring
6 a hybrid-type knee to market, something that is
7 based on mechanical, would have the function of
8 mechanical if the electricity or power would go
9 down, but would provide the stability of a
10 microprocessor knee if the power was up.

11 Q. Do you know whether there are any such
12 hybrid knees on the market in the United States
13 currently?

14 A. I would say that to the extent -- and this
15 is, again, open for interpretation -- that it's
16 fair to say that there's two -- actually, three
17 where the Nabtesco knee, the Plie knee, and the
18 Orion in our opinion qualify as hybrids.

19 Q. Have you heard of a product called the
20 Very Good Knee?

21 A. Very Good Knee, very good name. Yes, I
22 have heard of that product.

23 Q. Is the Very Good Knee a hybrid knee?

24 A. I wouldn't call it a hybrid knee.

1 Q. How would you describe the Very Good Knee?

2 A. Very Good Knee is a very well marketed
3 mechanical hydraulic knee.

4 Q. Does Ossur make any prosthetic knees that
5 are similar to the Very Good Knee?

6 A. I would say that they -- technology wise
7 they fit in the same bracket as the Mauch Knee, but
8 function wise there are certain aspects to the Very
9 Good Knee that patients report they prefer.

10 Q. What are those functions?

11 A. There's been made reference of the
12 adaptability to speed and I believe that running
13 was one of the things that was mentioned as well,
14 but this knee has never really taken off in the
15 United States. It's a German knee and the sales in
16 the United States, to the best of our knowledge and
17 to what we've heard in the market, has been
18 extremely limited.

19 Q. I believe we talked earlier that Ossur
20 does not have a hybrid knee on the market, correct?

21 A. Correct, and not one in development
22 either.

23 Q. Did Ossur around this time of DeRoy 6
24 start development of a hybrid knee?

1 A. We actually never did, no.

2 Q. Do you know why Ossur did not start
3 development of a hybrid knee?

4 A. Let's say that there were varied opinions
5 about which direction to go and we believed that
6 our opportunity in the full bionic segment, full
7 microprocessor controlled segment at the time was
8 bigger. That doesn't mean that there weren't
9 experiments with that, but they have gone back for
10 a decade. So I wouldn't say that it ever came to a
11 development project.

12 Q. Did Ossur do any studies on what the
13 likelihood of success would be for a hybrid knee in
14 the U.S. market?

15 A. Not really, no.

16 Q. Do you know whether Ossur would have tried
17 to get PDAC verification for the hybrid knee for an
18 L5856 designation?

19 A. I don't think we would have gone that
20 route given our skepticism about the application of
21 that code to this type of knee. We've always
22 considered it very important to bring true value to
23 PDAC and have been successful doing so with three
24 out of four reimbursed products by PDAC in the last

1 decade. So we didn't feel -- I'm pretty sure we
2 would not have gone down that route.

3 Q. Do you know whether Otto Bock's lower limb
4 prosthetic products are PDAC verified?

5 A. The C-Leg is PDAC verified. I can't speak
6 for all of their products, but I'm sure in their
7 range they have a good number of PDAC-approved
8 products as well.

9 (DeRoy Exhibit 7 was marked as
10 requested.)

11 BY MR. McCONNELL:

12 Q. Mr. DeRoy, you've been handed
13 Exhibit DeRoy 7 which is an Ossur launch plan for
14 the Rheo Knee XC and Rheo Knee 3 with the Bates
15 OSSUR-OTTO-00001661. Can you please review DeRoy 7
16 and let me know when you've completed your review,
17 please.

18 (Witness reviewing document.)

19 BY THE WITNESS:

20 A. Yes.

21 Q. Thank you, Mr. DeRoy. What is the
22 document reflected at DeRoy 7?

23 A. So this would be a launch plan for launch
24 of the Rheo Knee XC and the Rheo Knee 3.

1 Q. Does Ossur use launch plans for all of its
2 prosthetic products?

3 A. We use it for all products we're
4 launching, yes.

5 Q. Do you know who prepared the launch plan
6 reflected at DeRoy 7?

7 A. There's three names on the document.
8 Typically it would be the PMM prosthetics, the
9 person in the middle, that's the one that takes the
10 lead on the document and provides -- or gets input
11 from the other two to complete the document.

12 Q. DeRoy 7 reflects those three individuals
13 as being members of the Rheo Knee XC launch team.
14 Do you know whether those three individuals were
15 also on the Rheo Knee 3 launch team as well?

16 A. I cannot say with certainty, no.

17 Q. Do you know of anyone that was on the Rheo
18 Knee 3 launch team that's not reflected here on the
19 cover of DeRoy 7?

20 A. Possible, but I couldn't say with
21 certainty. We have a large group of people
22 combining efforts from Europe and the U.S. and that
23 is a varying group. So I couldn't tell you with
24 certainty.

1 Q. Do you have any responsibility in your
2 current role for developing launch plans?

3 A. I don't in my current role, no.

4 Q. Have you ever had responsibility for
5 adding information to launch plans?

6 A. I have provided input to launch plans in
7 my previous role, yes.

8 Q. And what role was that?

9 A. That was my role as VP of global
10 marketing, prosthetics.

11 Q. Did you provide any information to the
12 launch plan with respect to the Rheo Knee 3?

13 A. It's very likely, yes.

14 Q. Why does Ossur create launch plans for
15 prosthetic products that it intends to launch?

16 A. To make sure that everybody in the
17 organization is aware of the product, the
18 positioning, knows who it is intended for, knows
19 how we're planning to take it to market to maximize
20 the opportunity from a business perspective, at the
21 same time to make sure that the right product ends
22 up on the right patient, to define messaging, to
23 define key claims, to support the product.

24 Q. Do Ossur's launch plans accurately reflect

1 market information to the best of Ossur's
2 knowledge?

3 A. To the best of our knowledge, yes. This
4 is as accurate as we can put it together based on
5 the limited information that is out there.

6 Q. If you could turn, Mr. DeRoy, to page 4,
7 which is at the Bates ending 1664, please.

8 A. Yes.

9 Q. With section 2, "Goals," 2.1, "Qualitative
10 goals"; do you see that?

11 A. I see that.

12 Q. The last sentence of the second paragraph
13 reads "RK3 Plus will continue to target C-Leg, now
14 C-leg 4, and other MPK's in that range such as Plie
15 by Freedom and Orion by Endolite"; do you see that
16 see that?

17 A. I see that.

18 Q. Was the RK3 plus an upgrade to the Rheo
19 Knee 3 platform?

20 A. Yes, it was.

21 Q. Was the Rheo Knee 3 Plus reflected in
22 DeRoy 7 released to the U.S. market?

23 A. Let me check here. The Rheo Knee 3 Plus,
24 yeah, that's the one that's referred to here.

1 Q. And that was launched in the U.S. market,
2 that product?

3 A. That product was launched in the U.S.
4 market, yes.

5 Q. When was that product launched in the U.S.
6 market?

7 A. I believe it was launched in the first
8 half of 2016. Yes, it was launched in the first
9 half of 2016.

10 Q. Did the launch of the Rheo Knee 3 Plus in
11 January 2016 have an impact on market share of
12 other MPK makers in the U.S. market?

13 A. I can't say with certainty, but I think
14 from the previous graphs that we reviewed the drop
15 we had in Q2 of 2015, we assumed there that the
16 C-Leg 4 had an impact there. Even though we did
17 not come out with a waterproof knee, we came out
18 with a weather resistant or weatherproof knee,
19 which means waterproof you can submerge,
20 weatherproof it's fine if there's an occasional
21 splash of water on it, but this was our opportunity
22 to regain some of the business that we lost due to
23 the introduction of the C-Leg 4, yes.

24 Q. At page 7, it ends with the Bates 1667,

1 there's a chart that's titled "Ossur MPK sales by
2 segment"; do you see that?

3 A. Yes.

4 Q. And this chart refers to "Market share
5 gainers and stars"; do you see that?

6 A. Yes.

7 Q. Can you please describe what that means?

8 A. It's the secret sauce. Star customers are
9 customers that we know are Ossur loyal customers
10 that purchase a good amount of their overall
11 prosthetic components from Ossur and where we have
12 a good, respectable market share. The market share
13 gainers, as it states, they are opportunities for
14 us to gain market share. So those would be
15 customers that do do a lot of business, they're
16 large customers, but they're not necessarily
17 considering Ossur their first choice. So both
18 stars and market share gainers have a big wallet
19 one is giving a lot of that wallet to us, the other
20 one is a lot less of that wallet is to us.

21 Q. So market share gainers would be moving
22 from other prosthetic knee products to Ossur
23 products, correct?

24 A. That would be the goal, to get them to

1 move, yes.

2 Q. And market share gainers would include
3 users of both microprocessor prosthetic knees and
4 mechanical knees, correct?

5 A. In this particular case the focus would be
6 on the microprocessor side, but their
7 classification is based on their entire purchasing.
8 So it is knees, feet, liners, components,
9 everything. It's to our best guesstimate the
10 amount of business they do, sometimes confirmed by
11 a customer, sometimes not. So that market share
12 gainer is overall not a very loyal -- or let's say
13 doesn't have Ossur as first in mind when purchasing
14 products.

15 Q. And just to go back specifically, I
16 appreciate the information, but just specifically
17 to my question.

18 A. Yes.

19 Q. Would market share gainers include users
20 of both other manufacturers' microprocessor knee
21 products as well as mechanical knee products?

22 MS. SULLIVAN: Objection, asked and
23 answered.

24 BY THE WITNESS:

1 A. I'll specify somewhat. So market share
2 gainers being providers of full prosthetics, they
3 would be doing both mechanical and microprocessor
4 knees.

5 Q. And what are the other designations here,
6 the "Nonfocus" and "Maintain customers"?

7 A. You're never allowed to tell a customer
8 that he's nonfocused, but these are customers that
9 have a relatively small wallet where they might be
10 a one-prosthetist facility and where the
11 opportunity for growth is very limited, and in the
12 environment of the Medicare situation and such
13 they're probably in a tough spot to survive as a
14 single practitioner facility. So nonfocused means
15 that we would visit them to keep them up-to-date
16 probably once a year.

17 The maintain segment are customers that
18 have a little bit more business, we have a good
19 part of their business, we don't want to lose that
20 business, but their growth potential is limited.
21 So we would then spend the necessary time to keep
22 them up to speed on new developments and make sure
23 they continue to be loyal Ossur customers.

24 Q. If you could turn, please, Mr. DeRoy to

1 page 8, which is reflected at Bates 1668. There's
2 a chart at the top of the page that reads "Ossur
3 MPK life cycle sales"; do you see that?

4 A. Yes.

5 Q. What does that chart reflect?

6 A. So this is a graph that reflects the
7 different generations of Rheo Knee as they were
8 successively launched and how the sales performance
9 of those knees was specifically. So you can see
10 the rollover, the blue area going down, Rheo Knee
11 1, the orange one picking up, Rheo Knee 2, and then
12 the gray area, Rheo Knee 3, coming in, and then we
13 have the Symbionic leg as an additional product
14 which is basically a combination of a Rheo Knee
15 with a Proprio ankle.

16 Q. How popular is the Symbionic Ossur leg?

17 A. You can tell me I guess. Not very
18 popular. It did well for a while, but the
19 advancements that we were hoping to make on the
20 ankle side have taken a little bit longer time. So
21 for that reason we did not see that continuum as
22 much as we would have hoped.

23 Q. It looks like based on my reading of the
24 Ossur MPK lifecycle graph that the lifecycle of

1 Ossur's bionic products is getting shorter over
2 time; is that accurate?

3 MS. SULLIVAN: Objection, mischaracterizes
4 the document. Go ahead.

5 BY THE WITNESS:

6 A. I will say that the upgrades to the
7 product are more frequent than we were in the past.
8 It goes back to my comment earlier today that the
9 competitiveness, when you asked about that, it's
10 clear that when we look at it today there's more
11 new versions coming out of C-Legs as of Rheo Knees
12 as of Plies than there were in the earlier stage of
13 the microprocessor knees.

14 Q. If you could turn, please, Mr. DeRoy to
15 page 10 that ends with Bates 1670. There's a
16 section "Product analysis" and there's a
17 description for the Rheo Knee 3 at the bottom; do
18 you see that?

19 A. Yes.

20 Q. And it reads "Rheo Knee 3 is a
21 microprocessor prosthetic knee joint, MPK, and that
22 the K3 amputee with financial backing for a typical
23 mainstream MPK." What does that mean?

24 A. It pretty much means what it says, that

1 the positioning of the knee is for the K3
2 population that has the ability to afford the
3 product, either ours or whichever competitive
4 product, and the current price point is identified
5 there.

6 Q. Based on your experience in the industry,
7 do K3 amputees that lack sufficient financial
8 backing for a typical mainstream MPK select a
9 mechanical knee product?

10 A. Yes. If they do not have the necessary
11 funds, then it's likely that they'll be pointed in
12 the direction of a mechanical knee.

13 Q. There are several mechanical knees that
14 are medically appropriate for K3 amputees, correct?

15 A. There's definitely mechanical knees that
16 can support their daily activities. It's somewhat
17 of a compromise because microprocessor knees do
18 offer additional function, additional stability and
19 safety, and also allow for a more -- how do you
20 call it, a less requirement to be cognitively
21 involved with your prosthesis. So if possible, a
22 K3 patient would benefit from a microprocessor
23 knee.

24 Q. And that's generally speaking, right?

1 A. That's generally speaking. The general
2 finding is that if -- that's what the studies and
3 research supports is that there are benefits to the
4 patient in terms of stability, safety, preventing
5 falls, all the way down to energy consumption when
6 walking that typically a patient would be better
7 off wearing a microprocessor-controlled knee versus
8 a mechanical device.

9 Q. But we talked earlier that the
10 prosthetist's choice for a lower limb prosthetic
11 solution is individualized to that individual
12 amputee, correct?

13 A. The prosthetist's choice will depend on
14 the type of reimbursement that is available. If
15 the patient has reimbursement available for a
16 microprocessor knee, then within the range of
17 microprocessor knees, as you see with the price
18 specification, there is a low end and there is a
19 higher end. So the prosthetist will select within
20 microprocessors which one corresponds best to the
21 reimbursement the patient has and with that
22 selection they are potentially impacting their own
23 margin, yes.

24 Q. And within that mainstream microprocessor

1 knee segment the lower end priced product I think
2 you described are the Orion, Plie, and Nabtesco
3 product, correct?

4 A. Yes. Those three would be the lower end
5 priced.

6 Q. And the higher end of the mainstream
7 products are the Ossur, Rheo, and the C-Leg 4,
8 correct?

9 A. That is correct.

10 MR. McCONNELL: Is it okay if we take
11 five?

12 MS. SULLIVAN: Sure.

13 (A short break was had.)

14 (DeRoy Exhibit 8 was marked as
15 requested.)

16 BY MR. McCONNELL:

17 Q. Mr. DeRoy, you've been handed a document
18 DeRoy 8. It is a Q3 2017 market intelligence
19 report with the Bates OSSUR-OTTO-00001823. If you
20 could please review DeRoy 8 and let me know when
21 you've completed your review, please.

22 (Witness reviewing document.)

23 BY THE WITNESS:

24 A. Yes.

1 Q. What is DeRoy 8?

2 A. So it's a market intelligence report
3 that's produced on a quarterly basis which is a
4 summary of what we have picked up throughout that
5 previous quarter that could give us an indication
6 as to how the market is developing.

7 Q. Who at Ossur prepares the market
8 intelligence quarterly reports?

9 A. It's a combination of people. There's
10 local product marketing managers as well as
11 business analysts and a global director of market
12 intelligence that are compiling the information and
13 documenting it in this report.

14 Q. Do you have any role in preparing market
15 intelligence reports at Ossur?

16 A. Not any longer.

17 Q. Did you used to have a role in preparing
18 it?

19 A. I provided input into them, yes.

20 Q. Does the market information reflected in
21 Ossur's quarterly market intelligence reports
22 reflect the market information to the best of
23 Ossur's knowledge?

24 A. Yeah. With the limited data available

1 this is our best guess as to the size and split of
2 the market.

3 Q. Does it also reflect Ossur's best
4 estimation of other competitive factors in the
5 marketplace?

6 A. It reflects with the limited information
7 out there what we believe to be the size of the
8 competitive companies out there.

9 Q. If you could please, Mr. DeRoy, turn to
10 the slide that is reflected at Bates page 1825,
11 please.

12 A. Yes.

13 Q. Could you tell me what this slide is.

14 A. So this slide is an overview of the global
15 prosthetics lower extremity estimated market.

16 Q. In the table market dynamics there are
17 four market challenges identified; do you see that?

18 A. Yes.

19 Q. One is "Reimbursement", two is "O&P
20 clinicals consolidating," three is "Good quality,
21 low price manufacturers," and four is "Number of
22 amputees in western world stagnating"; do you see
23 that?

24 A. I see that.

1 Q. Do you agree with those being four market
2 challenges as of Q3 2017?

3 A. At that time those were identified to be
4 the key market challenges.

5 Q. In Q3 2017 what was the market challenge
6 for lower limb prosthetics related to
7 reimbursement?

8 A. The biggest challenge related to
9 reimbursement is the fact that it's there, it's
10 somewhat limited, and it has an effect on how fast
11 we can roll out some of other innovation. So when
12 we bring out new products that are considered
13 innovative that don't have a presence in the
14 market, then reimbursement usually takes time for
15 them to start accepting that. That's one. It
16 doesn't specify here, but it would include the
17 reimbursement challenges that we've talked about
18 earlier as well.

19 Q. The second bullet is "O&P" -- I'm assuming
20 that means orthotics and prosthetics -- "clinics
21 consolidating"; is that right?

22 A. Are you asking me whether it's orthotics
23 and prosthetics? It's orthotics and prosthetics,
24 yes.

1 Q. I am. Thank you.

2 Do you know what the challenge is or was
3 as of Q3 2017 relating to O&P clinics
4 consolidating?

5 A. So this is something that we've seen over
6 the last five years that the smaller mom-and-pop
7 shops have less likelihood of surviving in a more
8 dynamic and kind of changing environment. So
9 they're selling out to the bigger ones. In the
10 United States Hanger has been the leader in that
11 consolidation. In other markets we've seen
12 consolidation amongst others being carried out by
13 Otto Bock as well.

14 Q. In the United States why is clinic
15 consolidation a challenge to Ossur's prosthetics
16 business?

17 A. So with consolidation that means that
18 volumes are combined as well. So that
19 automatically increases the buyer power and
20 basically gives them leverage to potentially try to
21 get better deals on the products and the fact that
22 some of it or quite a bit of it -- this is not
23 specific to 2017, but consolidation into Hanger
24 obviously has a bigger impact there. This is one

1 line that has returns over the years that is an
2 underlying challenge that we have seen.

3 Q. Is it fair to say with respect to the
4 United States market that O&P clinics have
5 continued to consolidate over the last five years?

6 A. The number of clinics has reduced and
7 those selling their clinic to larger groups has
8 increased.

9 Q. If you could, please, Mr. DeRoy, turn to
10 the competition update for lower limb prosthetics
11 for North America at the Bates ending 1833, please.

12 A. Yes.

13 Q. Could you tell me what this slide
14 reflects?

15 A. So this slide is a snapshot of the North
16 America lower extremity prosthetics market with
17 reference to our main competitors.

18 Q. And only one of the four competitors is
19 indicated as having declining or growing less than
20 the market, correct?

21 A. Correct.

22 Q. That's Freedom Innovations?

23 A. That is correct.

24 Q. And this is for overall lower limb

1 prosthetics in North America, correct?

2 A. That is correct.

3 Q. This document was updated August 17, 2017,
4 correct?

5 A. It states on the slide that it's
6 August 17, yes.

7 Q. Do you believe the information in this
8 slide reflected at Bates 1833 is accurate to the
9 best of Ossur's knowledge?

10 A. To the best of our knowledge, I think
11 typically we put up an estimate in terms of how
12 reliable the data is because it is data that is
13 provided to us through hearsay, through customers,
14 through the occasional salespeople running into
15 each other, shaking hands and telling them how good
16 or bad their business is going.

17 Q. For the Freedom row under the column
18 "Growth contributors" there's a bullet "Full range
19 feet"; do you see that?

20 A. I see that.

21 Q. Do you agree that as of 2017 Freedom
22 offered a full range of prosthetic feet in the
23 United States?

24 A. They had a range that covered the large

1 majority of patient requirements, yes.

2 Q. Sticking with the Freedom row under the
3 column "Business drivers" it indicates that
4 Freedom's Hanger contract gives them a 40 percent
5 plus 4 percent growth incentive; do you see that?

6 A. I see that.

7 Q. Do you know what that means?

8 A. With the information that was provided to
9 us we were informed that there was a base discount
10 of 40 percent for products purchased by Hanger from
11 Freedom, and if they would hit a set target they
12 would qualify for an additional 4 percent based on
13 that growth target.

14 Q. Does Ossur give a discount to Hanger for
15 its lower limb prosthetic sales in the United
16 States?

17 A. Yes, we do have an agreement with them on
18 pricing.

19 Q. What is the discount that Ossur gives
20 Hanger for lower limb prosthetics in the U.S.?

21

22

23

24

Q. Do you think the 40 percent discount that

1 Freedom was giving to Hanger was sustainable for
2 Freedom in the long run?

3 MS. SULLIVAN: Objection, calls for
4 speculation.

5 BY THE WITNESS:

6 A. With the products that they have today and
7 with the further development, I think -- I can't
8 tell by the information that I have whether it's
9 sustainable for them, but if I look at the Ossur
10 margins and I look at comparable products, I think
11 it's fair to say that that is an affordable level
12 of discount if you're willing to compromise on the
13 profit that you're generating as a company.

14 Q. Do you know whether Freedom was a
15 profitable company in Q3 of 2017?

16 A. With the information provided to us as a
17 part of the due diligence it showed that their
18 bottomline profit was not positive. However, when
19 you dig into the numbers there's some explanations
20 there as to why that was the case.

21 Q. And then sticking with the Freedom line
22 under the column "Recent activities, comments" the
23 top bullet, "Struggling with bionic sales MPK,
24 selling very few Plie units"; do you see that?

1 A. I see that.

2 Q. Do you know why Plie was not selling well
3 in Q3 2017 for Freedom?

4 A. I can't put a specific reason to it. It
5 could be a variation of things. We've talked about
6 potential slower time of reimbursement, getting
7 approved. We did bring a new Rheo Knee to market,
8 possibly that has something to do with it, but I
9 couldn't tell with certainty.

10 Q. Mr. DeRoy, who are Ossur's largest
11 customers for prosthetic knees sold in the United
12 States?

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

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[REDACTED]

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[REDACTED]

Q. Just based on your answer, are you limiting that to bionic sales or to all lower limb prosthetic sales?

A. I think it kind of goes hand in hand, but bionics definitely and I think overall -- I don't think it's far off. It's probably the same group. Depends on how many you want me to name because there's more.

Q. That's fine for now. Thank you.

I'd like to start talking a little bit about Ossur's interest in purchasing Freedom Innovations in 2017. Were you involved at all in Ossur's consideration of whether to buy Freedom Innovations in 2017?

A. I was.

Q. What was your role?

A. As the VP of global marketing, prosthetics I was tasked with the investigation and the due diligence on the marketing information available, including the product information, sales information. I also dug into the local sales

1 information for the United States market, product
2 split, profit, everything pretty much that falls
3 under the marketing umbrella.

4 Q. What is Project Fox?

5 A. Project Fox is the name that we chose for
6 the Freedom acquisition project.

7 Q. Project Fox was the term used by Ossur in
8 describing the consideration of buying Freedom
9 Innovations in 2017?

10 A. That's correct.

11 Q. Why did Ossur consider acquiring Freedom
12 in 2017?

13 A. Well, Ossur's history is one of growth
14 through organic efforts as well as acquisition, and
15 there was a good opportunity to add market share
16 and representation and coverage within strategic
17 markets around the globe. There are rare
18 opportunities to add on to our product portfolio
19 with some complimentary products. So we felt there
20 was a good opportunity to add profitable business
21 for Ossur with the right synergy approach to the
22 acquisition.

23 Q. With respect to opportunities to gain
24 market share in the United States market, with what

1 products could Ossur gain market share by acquiring
2 Freedom in the United States market?

3 A. Well, the majority of their business is
4 prosthetic feet as well as microprocessor knee
5 sales. So that's the two segments that we would
6 have acquired market share with the acquisition of
7 Freedom.

8 Q. It's fair to say that Freedom sells many
9 more feet than microprocessor knees, correct?

10 A. In units they would sell more feet than
11 knees. In revenue, top of my head, I'd say it's
12 probably somewhat higher. It's probably more
13 60 percent feet, 40 percent microprocessor knees I
14 would say, to the best of my recollection.

15 (DeRoy Exhibit 9 was marked as
16 requested.)

17 BY MR. McCONNELL:

18 Q. Mr. DeRoy, you've been handed DeRoy
19 Exhibit 9, which is a July 2017 proposal from Ossur
20 that begins with Bates OSSUR-OTTO-00001009. Can
21 you please review DeRoy 9 and let me know when
22 you've completed your review, please.


23 (Witness reviewing document.)

24 BY THE WITNESS:

1 A. Yes.

2 Q. What is DeRoy 9?

3 A. So DeRoy 9 is a nonbinding proposal for
4 the acquisition of Freedom from Jon Sigurosson, the
5 chief executive.

6 Q. Mr. DeRoy, in July of 2017 Ossur valued
7 
8 correct?

9 A. That's correct.

10 Q. Do you know what that valuation was based
11 on?

12 A. It was based on a variety of things that
13 include obviously the current revenue of the
14 company, it included the profit of the company, it
15 included the profit potential of the company after
16 acquisition, it included the sales growth
17 opportunities, and the valuation in general I would
18 say was based on our value of the entire company as
19 an add-on to the Ossur business.

20 Q. Is it fair to say that as of July 26, 2017
21 Ossur had not yet determined if it purchased
22 Freedom Innovations how it would integrate Freedom
23 Innovations into Ossur, correct?

24 A. At this time we had various options in

1 mind as to how to proceed with Freedom integration
2 after acquisition, yes.

3 Q. And Ossur had not selected an integration
4 plan as of July 2017, correct?

5 A. We had no final decision on that.

6 Q. How much due diligence had been done by
7 Ossur as of July 26, 2017?

8 A. Very limited. The time frame for due
9 diligence was very tight and information flow was
10 very slow as well. So yeah, it was somewhat
11 challenging, but in the end with the information
12 available to us we felt that this was a valid offer
13 for the business as it was reviewed.

14 Q. On page 3 of DeRoy 9 right above No. 6
15 there's a sentence that reads "We are aware that
16 the NDA needs to be adjusted if Ossur is a
17 participant in the second phase"; do you see that?

18 A. I see that.

19 Q. Do you know whether an NDA was ever
20 adjusted for Ossur?

21 A. I do not know.

22 Q. Do you know whether Ossur agreed to an NDA
23 in conducting due diligence with its consideration
24 of buying Freedom Innovations?

1 A. I do not know. I can only assume that we
2 did, but legal would have to confirm that.

3 Q. Are you aware of any issues that Ossur had
4 with signing an NDA with Freedom Innovations?

5 A. I'm not aware of any issues, no.

6 (DeRoy Exhibit 10 was marked
7 as requested.)

8 BY MR. McCONNELL:

9 Q. Mr. DeRoy, you've been handed DeRoy 10.
10 It's a corporate development document labeled
11 "Project Fox" from July 25, 2017 with Bates
12 OSSUR-OTTO-00001869; do you see that?

13 A. I see that.

14 Q. Can you please review DeRoy 10 and let me
15 know when you've completed your review.

16 (Witness reviewing document.)

17 BY THE WITNESS:

18 A. All right.

19 Q. If you could turn, Mr. DeRoy, to slide 46,
20 which is a Freedom versus Ossur feet comparison
21 chart at Bates ending 1915.

22 A. Yes.

23 Q. Do you know what this document is?

24 A. I do.

1 Q. What does this slide reflect?

2 A. This slide reflects the Freedom product
3 offering for feet and puts it in a competitive
4 comparison against the Ossur feet that could be
5 considered equivalent. Equivalence is determined
6 by the coding recommendation as it applies, as well
7 as by the technical characteristics of the foot.
8 It includes the percentage of the amount of sales
9 that each of these feet has in the total for
10 both -- for Freedom and it includes their revenue
11 connected to those feet as well, and then it has an
12 analysis that decides on whether or not we should
13 retain, synergize, or otherwise complete the
14 portfolio as one after acquisition.

15 Q. The column I think you just described in
16 slide 46 titled "Portfolio Decision - Retain"; do
17 you see that?

18 A. Yes, I see that.

19 Q. For Freedom's feet product there's a
20 determination by Ossur of either yes or no; do you
21 see that?

22 A. That's correct.

23 Q. So is it fair to say that as of July 26,
24 2017 with respect to integration between Ossur and

1 Freedom this was Ossur's plan for which Freedom
2 products to keep and which Freedom products to
3 discontinue after acquisition?

4 A. I wouldn't say it was our plan. What this
5 was is information that was provided in order to
6 support the options we would have after
7 acquisition. So in this case a yes would mean
8 that -- the recommendation at the time if we were
9 to go forward with the option of full integration,
10 yes would say that we would continue to sell that
11 foot. A no would mean that we would look for
12 synergy opportunity and we would likely replace the
13 Freedom foot with an Ossur equivalent, which given
14 the fact that, as we discussed earlier, Freedom was
15 founded by some of the founders of Flex-Foot are
16 one-on-one comparable products.

17 Q. When you say "recommendation," who
18 provided the recommendation for the yeses or nos in
19 the column "Portfolio Decision - Retain"?

20 A. This slide was made by myself.

21 Q. So you personally made the decision?

22 A. That is correct.

23 MS. SULLIVAN: Objection to form,
24 mischaracterizes his testimony.

1 BY MR. McCONNELL:

2 Q. Mr. DeRoy, you made the decision to put
3 yeses or nos for the products reflected in slide
4 46?

5 A. I made the recommendation on whether or
6 not to keep or not keep this particular part of the
7 portfolio in relation to one of the options of the
8 work after acquisition, and, as you can see, next
9 to it it basically gives you an overview of what
10 the impact of revenue would have been and the
11 overall impact was about \$5.5 million on the total
12 of \$23.4 million. So that would have been the
13 impact we would have to take into consideration in
14 terms of valuation as well as potential revenue
15 losses.

16 Q. Do you know whether these recommendations
17 ever changed during due diligence?

18 A. Not as I can remember. I believe this is
19 the table that we went forward with.

20 Q. Did Ossur ultimately decide on a plan for
21 integration if it were to acquire Freedom
22 Innovations in 2017?

23 A. Let's say that there was no final
24 conclusion given the fact that the process

1 accelerated considerably and that the second phase
2 of due diligence was never completed as such. So
3 the options were still open on the table to be
4 further discussed.

5 MR. McCONNELL: Let's go off for one
6 second.

7 (Whereupon a discussion was had
8 off the record.)

9 (DeRoy Exhibit 11 was marked
10 as requested.)

11 BY MR. McCONNELL:

12 Q. Mr. DeRoy, you've been handed DeRoy
13 Exhibit 11, which is an e-mail from August 26,
14 2017. The From is unclear, but it's to Thomas
15 Beckers and others from Ossur with the Bates
16 beginning OSSUR-OTTO-00002787. Can you please
17 review DeRoy 11 and let me know when you've
18 completed your review.

19 (Witness reviewing document.)

20 BY THE WITNESS:

21 A. Okay.

22 Q. What is DeRoy 11?

23 A. DeRoy 11 is feedback provided to the
24 videos that we received that would describe -- or

1 show us the functionality of the new microprocessor
2 knee in development at Freedom referred to as Plie
3 Quantum or C-Leg killer is the way they positioned
4 it. So this is a review that we did.

5 We requested as part of due diligence to
6 get access to the product itself to be able to form
7 an assessment as to how good this product actually
8 was. It was sold to us as head-to-head, at least
9 as good as, probably better than, which any good
10 salesperson would. So we asked to actually be able
11 to get hands-on experience, get some of our
12 specialists in and try to evaluate it more
13 objectively. That request was denied for concerns
14 of information potentially becoming available to us
15 that would be confidential to the product. What
16 was provided were a range of videos which basically
17 gave us a snapshot of what a user, one user could
18 do on their new developed product.

19 Q. Just to clarify the record, I think the
20 project was Quatro and not Quantum, correct?

21 A. Sorry. Quatro, yes, you're right. I'm
22 sorry. Yes.

23 Q. And there's two points here made at the
24 top of the e-mail with the heading "BLUF." Do you

1 know what that "BLUF" stands for?

2 A. It stands for bottom-line upfront.

3 Q. And what do those two points determine
4 about the Quattro?

5 A. So with the videos provided it was very
6 difficult to form any firm conclusions given that
7 it provides a snapshot of one user in a certain
8 environment. What we were looking to identify or
9 verify was statements made by Freedom that this
10 product will behave like a C-Leg on stairs and
11 ramps, will outperform the C-Leg when it comes to
12 speed adaptation, will allow him to run, will allow
13 him to walk up stairs and such. Not all of those
14 functions were clearly provided within those
15 videos.

16 And the second point is that from what I
17 was able to see there was probably some good sales
18 efforts on the product, but that in the best of our
19 opinion it was another microprocessor knee with
20 regular microprocessor function. That is what we
21 could tell from the videos that were provided.

22 Q. Did you write this e-mail reflected at
23 DeRoy 11?

24 A. I did write that e-mail, yes.

1 Q. Did you write it in the course of doing
2 due diligence for Project Fox?

3 A. I did write it in that period of time,
4 yes.

5 Q. And who are the individuals in the To
6 field?

7 A. In the To field we have Thomas Beckers,
8 corporate development; Porvaldur Ingvarsson; and
9 then Magnus Oddsson. So we have the EVP and the VP
10 of R&D for -- VP for prosthetics, EVP for R&D.

11 Q. When you wrote "David oversold the product
12 quite a bit," are you referring to David Smith?

13 A. I'm referring to the CEO. I don't recall
14 his last name. The CEO of Freedom.

15 Q. I'll represent to you it's David Smith.
16 Unless you remember otherwise, please let me know,
17 but I believe it was David Smith.

18 A. Okay.

19 Q. Is David Smith the individual that told
20 Ossur that the Quatro project would be a C-Leg
21 killer?

22 A. He's the one, yes.

23 Q. Is that the one you're referring to here
24 when you wrote "David oversold the product quite a

1 bit"?

2 A. Yes.

3 Q. You refer to the patient that tried the
4 knee --

5 A. I would like to add to that, though. I'm
6 not stating he oversold the C-Leg killer. I'm
7 stating that from what I could see that it was my
8 conclusion that he might have oversold it given the
9 fact that some of the videos that would demonstrate
10 what he was considering to be the unique selling
11 points of the product were simply missing.

12 Q. And with respect to details around the
13 patient, you wrote that "Jeff is a good customer of
14 ours." Do you know who the patient is?

15 A. I knew the patient, yes.

16 Q. And is the patient a very -- I forget. A
17 star of Ossur?

18 A. He is part of the star customers, yes.

19 Q. And did he also test out the Rheo product
20 in 2017?

21 A. He did, as it states below. He actually
22 was in Iceland in May, tried out the latest version
23 of Rheo prior to its launch later in the year, and
24 this is a few months before he actually got onto

1 the Plie Quatro and he provided us feedback that
2 you guys have nothing to worry about, this
3 technology is very different from what you guys
4 have. So Rheo Knee is good, clear. However, he
5 did expect it to be a product that could compete
6 with the C-Leg.

7 Q. And why would he conclude that the Quatro
8 project could compete with the C-Leg but not the
9 Rheo product?

10 A. So he -- I can't officially speak for him,
11 but his comment was that he felt things on the Rheo
12 that he liked a lot. You have to keep in mind Jeff
13 is a patient with a very short stump that requires
14 a certain level of freedom. He's one of those very
15 exceptional ones that has preferred a mechanical
16 knee over a microprocessor knee and han't made the
17 switch yet. With the Rheo he tried in May he said
18 you're getting very, very close and because of that
19 comment he said you have nothing to worry about on
20 the Rheo knee, this product is clearly targeted
21 towards the C-Leg. Because he's a customer, he's a
22 clinician, he's a user, we do put value to his
23 opinion in terms of positioning and he has tried
24 every single knee on the market.

1 Q. And down 2(a)(ii), it looks like Jeff
2 shared with you -- or I guess you -- sorry. You
3 said from the videos shared with you that you
4 couldn't see any product behavior or response
5 superior to the C-Leg with the Quatro project,
6 correct?

7 A. So in the videos that were shared I could
8 not identify any superior. So, again, this goes
9 back to the way David presented it to us being
10 significantly better than, and in their
11 presentation they never mentioned the Rheo, it was
12 always directed pointed at the C-Leg. So I was
13 unable to identify those particular functions
14 within the videos that were provided to me.

15 Q. Did the outcome of your review of these
16 videos impact Ossur's valuation of Freedom
17 Innovations?

18 A. It impacted our request to actually get
19 hands-on experience with the knee, which was denied
20 again, and our offer that was made in July was
21 simply repeated. So we decided not to add any
22 specific value due to the inconclusiveness of the
23 information provided to us on the Plie Quatro

24 Q. Did Freedom offer you additional -- "you"

1 being Ossur -- additional access if Ossur signed an
2 adjusted NDA?

3 A. We had a discussion and we offered that we
4 would be fine -- at least that's how I remember
5 it -- we would be fine to do that. However, then
6 everything got into an accelerated route and the
7 next thing we knew the company was acquired by Otto
8 Bock. So we just never got to the final conclusion
9 or discussion on that.

10 Q. Do you know whether Ossur -- anyone from
11 Ossur ever declined to agree to an adjusted NDA
12 offered to it by Freedom to get more information on
13 the Quatro project?

14 A. I'm not aware of that, no.

15 Q. Was Ossur during this time in 2017 working
16 on any other MPK research and development projects?

17 A. Well, we are pretty much always working on
18 the next generation of Rheo. So I guess the answer
19 is yes, but continuing to work on the same
20 magnetorheologic, MR platform that we had
21 established years before.

22 Q. Did Ossur have any concerns that by
23 signing an NDA and getting more information about
24 the Quatro project that it could impact its R&D

1 projects with respect to other bionic products?

2 A. Like I said, I'm not aware of the fact
3 that we had any concerns or discussion on this. So
4 as far as I was informed, I believe the fact was
5 that time just ran out to make a decision based
6 upon whatever information they were provided and
7 that was the end of our opportunity to further
8 investigate.

9 MR. McCONNELL: No further questions for
10 now. I'll reserve my 30 minutes at the end.

11 (Whereupon, at 11:51 a.m., the
12 deposition was recessed, to
13 reconvene at 12:30 p.m., this
14 same day.)

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1 A. That's correct.

2 Q. Have you reviewed the topics in that
3 subpoena that was issued to Ossur?

4 A. I did.

5 Q. And subject to Ossur's objections and
6 responses, are you prepared to speak about those
7 topics today?

8 A. I am.

9 Q. Mr. DeRoy, what types of patients
10 typically require a lower limb prosthetic?

11 A. So patients that have undergone an
12 amputation of the lower leg, could also be
13 congenital issues where there's deformities to the
14 lower leg. Amputations that happen later in life
15 typically happen for either trauma, cancerous, or
16 vascular, diabetic-related issues.

17 Q. So the types of patients that require
18 lower limb prosthetics can range from a wide
19 variety of ages; is that correct?

20 A. That is correct.

21 Q. And that can result from a wide variety of
22 either health-related issues or accident, trauma-
23 related issues, correct?

24 A. Correct. With health related primarily

1 vascular or diabetic, yes.

2 Q. Who makes a recommendation for a
3 particular type of prosthetic knee?

4 A. So it varies sometimes. I would say that
5 the majority of the decisions as to what type of
6 product is required for a patient is made by the
7 prosthetist, but we are seeing a trend where more
8 and more the rehabilitating physician or even
9 surgeons in some cases are actually making the
10 recommendation as to what the best product for the
11 patient would be. It will always happen in
12 communication with the prosthetist and the patient
13 to come to the best possible clinical outcome for
14 the patient.

15 Q. What is a prosthetist?

16 A. A prosthetist is the healthcare clinician
17 that is responsible to build, develop a prosthesis
18 and then also apply it to the patient and give them
19 the basic training required for the patient to be
20 able to use the prosthesis.

21 Q. What is a prosthetist's goal in fitting a
22 patient with a lower limb prosthetic knee?

23 A. Sorry. The role of the prosthetist?

24 Q. What is the prosthetist's goal in fitting

1 a prosthetic knee?

2 A. So their goal is always to achieve the
3 best possible clinical outcome, which means we
4 often say trying to get them back to the activities
5 that they were doing prior to amputation. For
6 diabetic and vascular amputees in many case there's
7 very little activity. So then it's trying to get
8 them back to the best possible functional activity.

9 Q. Is it fair to say that the decision to fit
10 a particular patient with a particular type of knee
11 is a medical decision?

12 A. I would say it's a medical decision, yes.
13 It certainly has medical implications if the wrong
14 product were to be selected or the wrong solution
15 were to be selected.

16 Q. We spoke briefly about K levels this
17 morning. How does a K level affect the type of
18 knee that a patient might be fitted with?

19 A. So the way it is described there is a
20 requirement for a patient to classify as at least a
21 K3 patient to be able to get access to a
22 microprocessor-controlled knee. There are
23 mechanical solutions that range from K1 all the way
24 through to K4. So there's in that sense some

1 overlap, but there is a minimum requirement of
2 being K3 if you want to qualify for a
3 microprocessor-controlled knee.

4 Q. We also spoke about reimbursement this
5 morning. How does reimbursement affect the choice
6 of a microprocessor-controlled knee that a
7 prosthetist might recommend for a particular
8 patient?

9 A. So depending on who the payer is, the
10 payer could be Medicare, Medicaid, it could be the
11 VA, Department of Defense or a private payer, the
12 budget will be richer or poorer for the patient,
13 which if they're eligible for a microprocessor knee
14 but the overall reimbursement is slightly lower or
15 there is a bigger part that is an out-of-pocket
16 contribution from the patient, the selection might
17 trend towards the cheaper level of microprocessor
18 knees. Whereas if it is a VA patient or it is a
19 private pay due to workers' comp, for instance,
20 then typically patients will select the top of the
21 bill, the higher end of the microprocessor knees.

22 Q. You just listed a number of different
23 types of payers. What portions of Ossur's
24 microprocessor-controlled knees are reimbursed by

1 each of these types of payers?

2 A. It's difficult to really nail it down
3 because there's no real information that
4 objectifies that, but it's fair to say that a good
5 part of them are reimbursed by Medicare, probably a
6 an equal part being reimbursed by the VA or DOD, so
7 military related, and I think another third would
8 probably be within the private sector which is
9 private insurances. Then there's out-of-pocket,
10 but they're a smaller part of the population.

11 Q. Are you familiar with the reimbursement
12 amounts that payers might provide for
13 microprocessor-controlled knees?

14 A. I am.

15 Q. Approximately what is the range of
16 reimbursement for a microprocessor knee?

17 A. It ranges from the mid 20s up to the mid
18 30s depending on which combinations of coding is
19 being applied.

20 Q. What does that reimbursement amount
21 reflect?

22 A. So that reflects the actual purchase of
23 the device. So the prosthetist buys the device
24 from a supplier like Ossur. That also reflects the

1 time spent in assembling the device and the time
2 spent teaching the patients. To an extent it even
3 reflects the prosthetist following up on care with
4 the patient. Sometimes there's additional
5 reimbursement, but there's a base understanding
6 that some of it is also included in that initial
7 fee.

8 Q. Once the acquisition cost of the
9 microprocessor-controlled knee is subtracted from
10 that overall reimbursement, does that remaining
11 amount reflect what goes to the clinic or
12 prosthetist?

13 A. That is correct, yes.

14 Q. Given current reimbursement levels and the
15 prices that Ossur charges today, is there still a
16 margin that a clinic can achieve after
17 reimbursement if it uses a microprocessor-
18 controlled knee?

19 A. I have think there's fair margins for them
20 to fulfill the requirements of fitting, teaching,
21 and then follow-up, yes.

22 Q. When you were referring to reimbursements
23 earlier you mentioned that currently for
24 microprocessor-controlled knees it was in the mid

1 20s to mid 30s. Were you referring to mid 20,000s
2 and mid 30,000s?

3 A. That is correct. 25,000 up to 35,000 with
4 a midpoint around 30, and it's defined by -- these
5 are the Medicare reimbursement levels and it's
6 defined by state.

7 Q. How does the reimbursement level compare
8 between a microprocessor-controlled knee and a
9 mechanical knee?

10 A. It is considerably higher, as is the
11 purchase price of the individual devices.

12 Q. Approximately what is the range of
13 reimbursement for mechanical knees today?

14 A. There's a broad variety of mechanical
15 knees. So when we're in the lower end, the K2-type
16 knees, we're talking in the range of \$2,500,
17 \$3,000. When you're in the higher segment of K3
18 and K4 that would go up to \$7, \$8,000. Again, it
19 fluctuates quite a bit because certain knees with
20 certain functions will get slightly more
21 reimbursement and, again, it varies between states
22 as well.

23 Q. We spoke earlier about the margin that
24 clinics can achieve after reimbursement for

1 microprocessor knees. What does that margin look
2 like for mechanical knees?

3 A. For mechanical knees it depends obviously
4 which range you're in, but typically it's accepted
5 that the prosthetist will spend about 30 percent of
6 the purchasing price of the device -- sorry --
7 30 percent of the reimbursement of the device will
8 be spent on the purchase of the actual product. So
9 if you're talking about a knee that costs them
10 \$800, typically they'll be in the range of \$2,500
11 to \$3,000. That is true for the mechanical
12 products. For the microprocessor-controlled knees
13 there the ratios are a little bit different. There
14 we're talking about a margin that can go from
15 \$8,000 up to potentially \$12,000, but that depends
16 on the actual purchase price of the device where
17 there's a range as well.

18 Q. Given that the reimbursement rates today
19 for microprocessor-controlled knees are still
20 higher than the prices charged by Ossur to clinics
21 for the acquisition of the product, is there still
22 some room to raise price if Ossur chose to do so in
23 light of the reimbursement?

24 A. There is room, but everything within

1 reason. As I explained earlier this morning, if
2 you want to increase the price you would have to
3 address the value proposition, you would have to
4 increase the value of the product considerably to
5 justify to the user the out-of-pocket payment, to
6 justify to the prosthetist the fact that they're
7 actually decreasing their margin somewhat. So
8 there are things like if his fitting time is
9 included. If we were to develop a knee that would
10 be fit faster, more efficiently, would reduce that
11 time, then it's possible the prosthetist would
12 actually accept that and compromise the margin
13 somewhat.

14 Q. In your experience is it important to
15 clinicians that they're able to achieve lower
16 prices, acquisition prices for microprocessor-
17 controlled knees?

18 A. I think the market is showing an appetite
19 for lower prices, yes.

20 Q. What is the difference between a
21 microprocessor-controlled knee and a mechanical
22 knee?

23 A. So mechanical knee, as the term describes
24 it, is a knee that consists of mechanical

1 components that could vary from pneumatic to
2 hydraulic to just pure mechanical hinge systems
3 that support the patient in a standing position by
4 providing a locking mechanism and that allows the
5 patient to walk and swing the leg freely by
6 releasing that mechanical situation or mechanism.

7 When you come into the microprocessor
8 knees you actually have a knee that on top of
9 mechanical function they have a microprocessor that
10 is connected to the actuating mechanism of the
11 knee. So if you have a mechanical knee that has a
12 hydraulic actuator, when you put a microprocessor
13 on that knee and you control the valve that allows
14 fluids to go from one chamber to the next chamber
15 and you open and close the valve through the
16 microprocessor, that's what a microprocessor
17 controlled hydraulic knee would do.

18 So that's a simplification. How do they
19 do it? There are sensors built into the device.
20 So you actually -- to simplify it, a
21 microprocessor-controlled knee has the ability to
22 sense, think, and adapt. So it has sensors, it has
23 artificial intelligence that interprets whatever
24 sensors are being -- or whatever information's

1 being collected, and then it defines what activity
2 is needed from the actuation mechanism being
3 releasing it so that the patient can swing the leg
4 forward while walking or be on his bike and do a
5 cyclic motion without having resistance or provide
6 a breaking mechanism so that if the patient walks
7 down stairs the amount of resistance they get is
8 sufficient for them to go down stairs comfortably
9 and safely.

10 So the microprocessor knee also has the
11 ability to track if the patient would stub their
12 toe, the knee would sense that and immediately
13 provide stability so that it would lock and the
14 patient can safely transfer the weight to the
15 prosthetic leg and still be standing. If you were
16 to do the same with a mechanical knee, if you would
17 stumble your toe and the knee is not in full
18 extension, not fully swinging forward, it's likely
19 that the patient would stub the toe, the knee would
20 collapse underneath them, and they would fall. So
21 fall prevention is one of the key elements of the
22 microprocessor knee.

23 The second key element and why it was
24 introduced is that when people walk they never walk

1 at the same walking speed. You can imagine that if
2 you have a valve that is open in one opening that
3 it will only allow as much fluid, the faster you
4 walk the faster the fluid would need to go through,
5 but it can't. So the knee is going to be slow for
6 the patient. The microprocessor-controlled knee is
7 going to open that valve, allow the fluid to go
8 through, and adjust to variable cadence. So I
9 think stand stability and safety is one thing.
10 Adapting to the walking speeds is an important
11 second thing.

12 And what I described to you now is the
13 hydraulic system. So when you talk about the
14 magnetorheologic, the MR version of microprocessor
15 knees, it's the same principle, but it's applied to
16 a totally different type of technology that allows
17 to do -- to provide the resistance in a similar
18 way, but allows to provide a lot more flexibility
19 and fluidity when the patient is walking freely.
20 So that's why patients that are more active would
21 typically feel the knees more freely following
22 them, it's less restrictive, and prefer that knee
23 over a hydraulic one.

24 Q. I'd like to talk about these differences

1 in just a moment, but before we do so, are there
2 any other benefits besides the additional safety
3 and variable cadence to microprocessor knees?

4 A. I think in terms of functionality to the
5 patient those would be the main two. To the
6 practitioner there's some benefits that because it
7 is a microprocessor knee there's data collected
8 inside the knee, there's connection to your mobile
9 phones. So when the patient comes in the
10 practitioner knows exactly how much walking the
11 patient has done. It goes as far as the payer can
12 gather reports and say you're paying \$30,000 for
13 this knee, this knee has walked a million steps a
14 year. Therefore your investment is one that is
15 paying off. So that's the direction that is
16 developing now is we get more information and we
17 use it to the benefit of supporting an application
18 for a new knee as well.

19 Q. Are you aware of any health economics
20 analyses related to the benefits of microprocessor-
21 controlled knees?

22 A. So up until recently there was none, but
23 there was a recent study that was funded by AOPA
24 that was done by the Rand Committee, R-A-N-D. That

1 was the first health economic study done on
2 microprocessor knees and that actually came out
3 very favorable for those knees based on the
4 function -- or based on the ability of those knees
5 to prevent falls primarily. Associated cost of
6 falls and the injuries related to that are far
7 exceeding the actual cost of the prosthesis
8 initially.

9 Q. How do you expect the reaction to be
10 amongst payers and the prosthetics community to
11 these types of studies?

12 MS. SULLIVAN: Objection, calls for
13 speculation.

14 BY THE WITNESS:

15 A. I can tell you how we intend to utilize it
16 to support the utilization of our microprocessor
17 technology. We believe this is very valuable data
18 to prove to a payer that if they were to invest in
19 this type of a product it is likely that over a
20 period of time they will get a return on that
21 investment, and that is taken into consideration,
22 the potential impact of a fall, the cost of a fall.
23 So we're definitely proactively using that to
24 support cases for patients that are being denied or

1 support cases in general to convince payers that it
2 is a good thing to choose a microprocessor knee
3 over a mechanical knee.

4 Q. Have you seen any impact in the payer
5 community thus far given the new research?

6 A. Nothing that I can objectively support,
7 no.

8 Q. Respondent's counsel asked you this
9 morning about RAC audits; do you recall that?

10 A. I do.

11 Q. What is a RAC audit?

12 A. So a RAC audit is an audit that is
13 executed by a RAC auditor on behalf of Medicare
14 where they're evaluating whether historic payments
15 provided for prosthetic care were justified for the
16 particular patient that was receiving the
17 prosthesis. So did the patient meet the
18 requirements prescribed by the L codes in Medicare
19 to get that type of prosthesis and also did the
20 documentation that is required to get that patient
21 approved support the need and was documentation
22 present.

23 Q. What was Ossur's response to these RAC
24 audits being implemented back in 2012 and 2013?

1 A. I would say that our main response was
2 education. Obviously we couldn't necessarily -- we
3 could not fix what they had done historically, but
4 we could definitely educate them on what the new
5 requirements were and they did have the ability to
6 retroactively update certain files. So it was very
7 important for us to basically calm the market down,
8 provide them with the necessary information, and
9 try to help them document and evaluate patients
10 appropriately for them to continue to receive the
11 microprocessor knee or the K3 feet care as well
12 because both of those were under scrutiny at the
13 time.

14 Q. And these initiatives to educate
15 clinicians that have been instituted by Ossur, have
16 you seen microprocessor knee sales stabilize?

17 A. Let's say in the 2012, '13 period of time
18 there was no immediate reaction, but the
19 normalization and actually the return to previous
20 levels shows that the confidence level of the
21 practitioners increased and the number of
22 microprocessor units increased again as well
23 accordingly.

24 Q. Sitting here today, has the number of

1 microprocessor knee sales for Ossur returned or has
2 it exceeded beyond what it was prior to 2012?

3

4 Q. Sitting here today, do you anticipate
5 there to be any additional impact on Ossur sales
6 when we're talking about RAC audits?

7 A. I would say RAC audits were very present
8 in 2012 and '13. It has reduced quite a bit. It's
9 difficult to predict what the frequency of RAC
10 audits are going to be going forward. If they were
11 going to come up strong again there probably would
12 be somewhat of a reaction, but like I explained
13 earlier, I think customers are much better prepared
14 now to deal with the new regulation and
15 requirements and also the consolidation of the
16 market somewhat has led to the fact that the
17 companies are just more equipped -- better equipped
18 to deal with regulatory changes.

19 Q. Respondent's counsel this morning also
20 asked you questions about PDAC verification; do you
21 recall that?

22 A. Yes.

23 Q. And I believe you had mentioned that the
24 Plie 3 today does not have PDAC verification; is

1 that correct?

2 A. It was never taken to PDAC to get the
3 approval, that's correct.

4 Q. Despite the lack of PDAC verification,
5 does Ossur still view Freedom to be one of its
6 microprocessor knee competitors today?

7 A. We do.

8 Q. And in conducting due diligence for the
9 potential purchase of Freedom Innovations, did the
10 lack of PDAC verification prevent Ossur from making
11 a bid for the business?

12 A. No, it didn't prevent us from making a
13 bid. We raised our concern during due diligence
14 internally that there might be a risk associated
15 with the products that weren't PDAC approved, but I
16 want to make clear that products don't have to be
17 PDAC approved to be reimbursed. It's just an
18 additional level of confidence for the prosthetists
19 that the codes that are being recommended are, in
20 fact, the codes that will be paid for as well.

21 Q. And even though Freedom did not have PDAC
22 approval for the Plie 3, Ossur has still seen an
23 impact in the marketplace from Freedom's presence;
24 is that correct?

1 A. Can you rephrase that?

2 Q. Even though the Plie 3 does not have PDAC
3 approval, has Ossur seen the Plie 3 make an impact
4 in terms of market share and market presence?

5 A. It has, yes.

6 Q. I'd like to change topics and speak a bit
7 about Ossur's microprocessor knees. You mentioned
8 earlier that the MR technology is different from
9 hydraulic technology. Could you please explain
10 what the primary differences are?

11 A. Yes. So the way I explain the hydraulics
12 is that you have a cylinder that has two chambers,
13 in the middle there's a valve. The valve is open,
14 the fluid flows freely. The valve closes, the
15 fluid is hindered. So when you're trying to bend
16 the knee when the valve is closed, the fluid is not
17 moving, the knee is not bending. When the valve is
18 opened the knee will start bending. Closed means
19 stand stability, open means that it's freely
20 moving.

21 The way the hydraulic units are developed
22 is they're in stance default, which means that if
23 you're on a hydraulic unit, you put it on the
24 floor, the first thing it does is always provide

1 stability. You have to unlock it through the
2 sensor recognition through the microprocessor to
3 get it to bend. So that's very specific on the
4 hydraulic side.

5 On the magnetorheologic side there's no
6 fluid going from one chamber to another. The way
7 it's built up is you have a cylinder that's filled
8 with blades and between those blades there's what
9 we call the electromagnetic fluid, the MR fluid
10 which has magnetic particles into it. So what we
11 do is we create an electromagnetic field. When you
12 create that field those magnetic particles they
13 line up and they form bridges between the different
14 blades. Those bridges provide a magnetic break.
15 So the higher the voltage the higher the magnetic
16 field that is delivered the more friction there is
17 on the knee comparable to the valve being
18 completely closed on the hydraulic side and you
19 provide stand security.

20 Now, the benefit to magnetorheologic is
21 that when you have no current going through it the
22 fluid actually functions as a lubricant. Whereas
23 on the hydraulic unit you're trying to push fluid
24 back and forth from one chamber to the next, now

1 you have nothing but a lubricant moving those
2 blades very freely. So the way this affects the
3 user is when they walk during swing phase that's
4 typically where with a hydraulic unit they need to
5 lift the leg a little bit, they're the ones kicking
6 the leg forward. That's where they're using stump
7 strength, their lower back to get the leg to move.
8 On the MR Rheo knee because the resistance is so
9 low they're using the energy that comes out of the
10 foot to swing the prosthesis forward as in a normal
11 pendulum.

12 So what that means in terms of utilization
13 is that patients that use magnetorheologics they're
14 going to feel that they're requiring less effort to
15 walk. When they change speed they're going to feel
16 that it follows much quicker. When they're in
17 confined spaces and walking around they're going to
18 feel that it's easier to walk around and bend the
19 knee because it doesn't require the effort, and if
20 you don't have space to lift up your leg and kick
21 it, that would be a limitation.

22 The difference, however, is that whereas
23 the hydraulic one is a stance default knee, the
24 magnetorheologics is a swing default knee, which

1 means that it's always free swinging unless you put
2 it on the floor and trigger the electric field to
3 be created, then it's going to provide a brake. So
4 this is where the user group that uses
5 magnetorheologics needs to have better control,
6 voluntary control over the leg in case the leg runs
7 out of battery.

8 In the case for whatever reason there's a
9 default, then they would be walking on a knee that
10 is completely free. If a microprocessor-controlled
11 knee with hydraulics runs out of battery typically
12 it becomes a stiff knee. So you're walking on a
13 peg leg on one, you're walking on a full free
14 swinging knee on the other. So if you look at the
15 patient population, those that require -- or those
16 that can take the chance of walking on a free
17 swinging knee are the ones that are on the moderate
18 to higher end of activity levels. Whereas those
19 that are dependent on a full stiff leg in case
20 there would be something wrong, they're the ones
21 that could be much more towards the lower side of
22 the K2 population.

23 So that's kind of how those two split up
24 and that's also how the research that is available

1 supports the differentiation in functional outcome
2 of the very complicated differentiation in
3 technology.

4 Q. So what type of technology does the C-Leg
5 4 employ?

6 A. So the C-Leg 4 is based on that hydraulic
7 technology.

8 Q. What about the Plie 3?

9 A. Plie 3 is what they refer to as a hybrid.
10 It utilizes hydraulic technology for stance
11 control. It utilizes a pneumatic type technology
12 for the swing control.

13 Q. Given these differences in technologies,
14 what is a closer technology to the Plie as between
15 the Rheo and the C-Leg 4?

16 MS. SULLIVAN: Objection to form. If you
17 understand the question, go ahead and answer.

18 BY THE WITNESS:

19 A. Can you repeat the question, please.

20 Q. Sure.

21 As between the Rheo and the C-Leg 4, given
22 these types of technologies, what is a closer
23 technology to what the Plie 3 has today?

24 A. From a technology perspective, I mean, the

1 hydraulic part of the Plie is not identical, but it
2 is the same hydraulic platform as a C-Leg.

3 Q. You mentioned that the more active users
4 might prefer or benefit more from the Rheo MR
5 technology, correct?

6 A. That's right.

7 Q. What happens if a less experienced patient
8 uses a Rheo or the MR technology?

9 A. So if the Rheo Knee were to run out of
10 battery or if for whatever reason there would be a
11 failure to the knee, the knee turns in to a freely
12 swinging knee. That could happen unexpectedly. If
13 that were to happen unexpectedly on a patient that
14 is not as well in control of the prosthesis, that
15 could risk -- or result in a fall.

16 Q. How does Ossur position the Rheo Knee
17 today against its competitors?

18 A. That depends on which competitor we're
19 comparing to, but we're definitely positioning
20 ourselves as a premium knee within the
21 microprocessor range, which in that segment I would
22 say the C-Leg is the closest positioned in terms of
23 price. We position it as a more intelligent knee
24 because of the way we steered the intelligence, it

1 is able to detect how the patient walks and
2 automatically -- autodetects and autoadjusts the
3 settings of the knee to provide the smoothest
4 possible function. So that's one part. The second
5 part is we focus on the ability to walk inside of
6 confined spaces, which is a big part of the typical
7 activity of a person, and emphasize how easy that
8 is on the Rheo versus the C-Leg or the Orion or the
9 Plie, for that matter.

10 Q. Does the current Rheo Knee offer water
11 resistance?

12 A. It offers weatherproofness, so splash
13 proof.

14 Q. What is the current list price to
15 prosthetist clinics for the Rheo Knee?

16 A. It's in the range of \$19,500.

17 Q. How does that compare to Freedom's Plie?

18 A. I think list price we're not far apart. I
19 think the difference is more after discount.

20 Q. After discount what would the difference
21 be?

22 A. So our estimates are that we end up in the
23 range of 16,500, 17,000. Whereas our estimates
24 because we don't have any hard facts or figures on

1 this are that they're more in the range of \$14,500
2 and that's based on customer feedback, that's based
3 on tools that are used by our customers to
4 negotiate better prices from us as well.

5 Q. You mentioned that the microprocessor knee
6 on the market today that competes most closely with
7 the Rheo is the C-Leg. What would be the next
8 closest competitor to the Rheo?

9 A. I'd say the Plie's probably the next
10 closest.

11 Q. When Ossur acquired Flex-Foot did it
12 already have its own mechanical knee on the market?

13 A. Ossur did have a mechanical knee at the
14 time, yes.

15 Q. Did Ossur -- why did Ossur choose to
16 acquire Flex-Foot?

17 A. Well, at the time we were a liner company
18 primarily. We had recently acquired the Total Knee
19 as well and to become a total leg provider, a
20 complete offering provider we were missing the
21 foot. So that's why we pursued the acquisition of
22 Flex-Foot.

23 Q. Flex-Foot also had a bionic knee in its
24 portfolio in the making?

1 A. It was in development. It was not ready
2 at the time of the acquisition.

3 Q. Why did Ossur choose to develop that
4 microprocessor or bionic knee?

5 A. Because, one, we believed in the fact that
6 a microprocessor-controlled knee would benefit the
7 patient's outcome and would contribute to a more
8 safe, stable, and more active lifestyle for the
9 patient. Then, two, from a business perspective we
10 noticed that's where the market was going and that
11 that would be a great opportunity for tradeup in
12 technology.

13 Q. Did you view it to be a complimentary
14 product to -- and by "it" I mean the microprocessor
15 knee -- a complimentary product to Ossur's
16 mechanical knee?

17 A. Yes, definitely.

18 Q. How does the Rheo XC differ from the Rheo
19 Knee?

20 A. So the Rheo Knee XC includes a couple of
21 features and functions that are not available in
22 the Rheo Knee, such as the smooth transition from
23 level ground walking to biking, it supports
24 running, and it also supports up stairs walking as

1 well as hindrance avoidance, so your obstacle
2 avoidance. You're able to take a step over an
3 obstacle with more stability and more safety.

4 Q. What is the price point for the Rheo Knee
5 XC?

6 A. In the range of \$28,000.

7 Q. What types of payers provide reimbursement
8 for the Rheo XC?

9 A. So I would say that the Veterans Affairs,
10 the VA are the primary payer, but there's also DOD
11 patients that are walking on the knee. We have
12 workers' comp patients as well. So I would say the
13 other payers apart from Medicare and Medicaid.

14 Q. Do Medicare and Medicaid provide
15 reimbursement for the Rheo XC?

16 A. They do not.

17 Q. What about most private payers?

18 A. It's hit and miss. It varies.

19 Q. What is the closest available
20 microprocessor knee on the market today to the Rheo
21 XC?

22 A. I would say the Genium is the only
23 comparable knee to the Rheo Knee XC.

24 Q. Are you referring to the Genium that's

1 offered by Otto Bock?

2 A. Correct.

3 Q. Lastly, with the microprocessor-controlled
4 knees I understand that Ossur offers the Power
5 Knee. Could you please describe the target patient
6 population for the Power Knee?

7 A. Yes. So Power Knee is targeted at the
8 moderate active, typically K3 patients. The coding
9 actually limits it to K3 patients as well. This
10 device is intended to provide active lifting power.
11 So for those that are struggling with getting up
12 from a seated position, those that actually
13 struggle to initiate the swing phase while they
14 walk, the Power Knee will actively lift them out of
15 the chair and will also support the active walking,
16 will thereby provide extra ground clearance, which
17 is the space between your toes and the ground
18 because your leg swings forward, and it provides an
19 extra level of safety and stability which is
20 unequalled by any device which does not have power.

21 Q. What is the current list price for the
22 Power Knee today?

23 A. \$38,000.

24 Q. What is the closest alternative option as

1 far as microprocessor knees on the market today?

2 A. There is none really.

3 Q. Are there certain types of payers that
4 will and will not provide reimbursement for the
5 Power Knee?

6 A. Yes. We're talking again about VA, DOD,
7 they would consider it on a more regular basis.
8 Workers' comp patients as well. Private insurance,
9 again, hit and miss, quite a bit more difficult.
10 Where we have seen a good adoption is when patients
11 are missing more of the leg, so when they're hip
12 disarticulation patients, the amputation is at the
13 level of the hip where the hip function is missing
14 as well, that's when a Power Knee with the active
15 pendulum and motorized pendulum is compensating for
16 some of the lost power in the hip as well. So
17 that's where it's really well received. As well as
18 patients who have lost both legs, that's a group
19 that benefits quite significantly as well. It is a
20 limited group still today.

21 Q. How large is Ossur's R&D department?

22 A. Can you specify R&D prosthetics, R&D as a
23 whole?

24 Q. Sure. How large is Ossur's R&D department

1 for prosthetics?

2 A. For prosthetics the lower extremity part
3 is around 75 to 80 people and that is the
4 engineering team, medical office, quality, it has
5 design center project management. For the upper
6 extremity it has an additional 16 people.

7 Q. How large is Ossur's annual R&D budget for
8 lower limb prosthetics?

9 A. Lower limb prosthetics, that's a good
10 question. I don't have the number readily
11 available.

12 Q. Do you have an estimate?

13

14

15 Q. And how is your R&D department organized
16 as far as which engineers are assigned for which
17 types of products, et cetera?

18 A. So we have two core groups within R&D
19 prosthetics lower limb. One of them is a
20 biomechanics group, the other one is a bionics
21 group. Both teams consist of about 22, 23 people
22 and within those groups we have people on the
23 biomechanical side dedicated to liners, feet,
24 sockets, and then biomechanical solutions which

1 kind of combines the rest and mechanical knee
2 separately. Then on the bionic side we have --
3 it's split up into electronics, software and
4 firmware, and mechanical, and then we have bionic
5 systems and under bionic systems that's where you
6 find people responsible for Rheo Knee, Power Knee,
7 Proprio Foot.

8 Q. Are the research employees who are
9 responsible for bionic systems responsible for any
10 other products beyond the Rheo Knee and the Proprio
11 Foot?

12 A. And Power Knee, so those three, yes. So
13 that's the core lower extremity bionics team.

14 Q. So the same bionics team that works on the
15 Proprio Foot works on the Power Knee and Rheo Knee?

16 A. Yes. That group of 22, 23 people, yes.

17 Q. Beyond the Rheo Knee, Rheo Knee XC, and
18 Power Knee, does Ossur have any products in its
19 pipeline related to microprocessor knees today?

20 A. No.

21 Q. Does Ossur have any plans to introduce any
22 combination products that would combine a
23 microprocessor knee and, say, an ankle or a foot?

24 A. We actually have that in our portfolio

1 today with the Symbionic leg. That is a product
2 that basically combines the Proprio ankle,
3 microprocessor-controlled ankle with the Rheo Knee.
4 So that is currently available.

5 Q. I think you mentioned earlier this morning
6 that the Symbionic leg has not had a tremendous
7 uptick in sales over the last few years; is that
8 correct?

9 A. That is correct.

10 Q. Why do you think that's the case?

11 A. It's a more challenging package to combine
12 when you're applying for reimbursement. The
13 Proprio Foot, which is the ankle that we use for
14 the Symbionic leg, has been called experimental by
15 quite a few of the larger payers in spite of the
16 fact that Medicare has applied a code for it and
17 there's a value for it as well. So that means that
18 there's more pushback from independent payers to
19 actually apply that technology, and that is not
20 very different from how it was in the earlier days
21 of microprocessor knees as well. So we do expect
22 that over time there will be a larger appetite and
23 a higher adoption of the combination of both.

24 MS. LAO: Let's take a quick break and go

1 off the record.

2 (A short break was had.)

3 BY MS. LAO:

4 Q. Mr. DeRoy, could you please describe
5 Ossur's contracting process with clinics for
6 microprocessor knees?

7 A. Can you specify contracting for me?

8 Q. Sure. Could you please describe how the
9 negotiations play out between Ossur and clinics for
10 the sale of microprocessor knees?

11 A. For the price or for the actual sale?

12 Q. For the price.

13 A. Price. Okay. So it's not untypical that
14 they would utilize competitive pricing to try to
15 get better pricing from Ossur. Our typical
16 strategy is that we believe we have a premium
17 product with premium functionality. So we have our
18 limitations when it comes to discounts and those
19 limitations would usually be connected to the
20 volume of sales that that customer can guarantee us
21 on an annualized basis.

22 Q. How does Ossur determine any discounts or
23 rebates that it offers to its customers for
24 microprocessor knees?

1 A. So like I said, it's primarily based on
2 the number of patients they would see that are
3 eligible on an annual basis and commitment from
4 them on that volume for that year.

5 Q. And does Ossur discuss what prices other
6 microprocessor knee suppliers might be offering to
7 its clinic customers?

8 A. We would typically not bring that up
9 ourselves, but it is definitely a bargaining tool
10 that the customers use to try to get a better deal.

11 Q. When engaged in pricing negotiations with
12 clinics which competitors come up most often in
13 Ossur's discussions?

14 A. I would say that the Freedom Plie knee
15 would be the number one when it's about price, and
16 then there are two others that are mentioned
17 occasionally, which is the Orion and the knee from
18 Nabtesco.

19 Q. You just mentioned that the Plie is
20 mentioned most often with respect to price. Why is
21 that the case?

22 A. I think it's a combination of the fact
23 that it is the -- well, it is amongst the cheaper
24 knees as well as still a quite frequently used knee

1 as well.

2 Q. You mentioned that the Orion is mentioned
3 on occasion. What type of technology does the
4 Orion knee employ?

5 A. So the Orion knee is a little bit more
6 hybrid. I think the base technology is hydraulics
7 as well, but I think it connects closer to what the
8 Plie looks like in its setup.

9 Q. In terms of quality, how does it compare
10 to the Plie?

11 A. I can't speak to the return rates because
12 I don't have the visibility to it, but in terms of
13 functionality I would say that the Plie's probably
14 the preferred knee over the Orion. Not probably.
15 That's the feedback that we get is that it is the
16 preferred knee over the Orion.

17 Q. In Ossur's experience how does the quality
18 of the Nabtesco knee compare to the Plie?

19 A. So, again, here we have very little
20 visibility in terms of returns. Function wise,
21 again, I think it is inferior to both the Orion and
22 the Plie.

23 Q. Does Nabtesco offer a sales force in the
24 United States?

1 A. No. They sell through distribution.

2 Q. What is the function of a sales force in
3 the microprocessor knee industry?

4 A. So the Ossur sales force is certified to
5 assist in fittings of microprocessor-controlled
6 knees. The sales force also includes a team of
7 technical clinical specialists that are typically
8 prosthetists that will come in and support fittings
9 from start to finish, will educate on fittings,
10 will make sure that new customers are fully aware
11 on the requirements and the settings, the
12 programming of the knee to ensure good functional
13 outcome.

14 Q. How many sales representatives and
15 clinical specialists does Ossur employ in the
16 United States?

17 A. It's in the range of 40 people.

18 Q. Where are they located?

19 A. They're located across the country.

20 Q. Do these sales representatives sell more
21 than just microprocessor knees to clinics?

22 A. They do. They sell the full portfolio of
23 prosthetics.

24 Q. By "full portfolio" you mean upper limb as

1 well as lower limb?

2 A. They do, yes.

3 Q. That includes linings --

4 A. The liners, the mechanical feet,
5 components, mechanical knees, everything.

6 Q. You mentioned that the clinical
7 specialists provide educational training for
8 clinicians. Why is that important?

9 A. So it's important for all products across
10 the board. For microprocessor knees specifically
11 there's programming, there's user selection that is
12 very important. Like we said earlier, the knee is
13 not recommended for people that have a lack of
14 voluntary control. So as the Ossur rep or clinical
15 specialist is present, we make sure that the
16 patient is able and capable of walking with the
17 knee turned off so ensure that it is the right
18 patient profile for the device. So it's patient
19 selection, it is setup of the knee, programming,
20 and it is the initial training as well to ensure
21 that the product itself is used to the maximum of
22 its capacity.

23 Q. Now, are the sales representatives and
24 clinical specialists used more for certain products

1 within the Ossur portfolio?

2 A. Yes. Well, the sales reps have the task
3 to sell the full portfolio. They have a tendency
4 to divert in the direction of the more expensive
5 products because it's easier for them to reach
6 their sales quotas if they can drive the volume
7 there. For the clinical specialists I think it's
8 fair to say that the majority of their time will be
9 dedicated to the more complicated products and the
10 bionic products are definitely a part of that. If
11 I look at the split in terms of focus, on an
12 annualized basis it's fair to say if we have a
13 split of 10, 15 different categories where the
14 sales force is entering what their focus is, the
15 one that's always on top is bionics. That's where
16 the sales force is spending the majority of their
17 time and that quite far exceeds quite a few of the
18 other segments in prosthetics.

19 Q. Are there any other types of specialists
20 or employees within Ossur that assist in the sale
21 of microprocessor knees?

22 A. Not necessarily in the sale, but it does
23 take quite an expansive team to take care of the
24 sales, the after sales, the customer service, the

1 returns, managing loaner units. So those are
2 things that we do on the bionics side which we
3 don't typically do on the mechanical product side.

4 So we will allow for patients to have a
5 trial fitting so that the patient can have the
6 experience, they can compare it to other products.
7 The prosthetist can use that experience to document
8 whether or not the patient is the right profile,
9 can use the outcome of that test to support the
10 application for reimbursement as well. So that's a
11 service that is done. Therefore loaner units are
12 dispensed or deployed to do that trial, and if the
13 patient then chooses for the Rheo Knee, then the
14 application goes in, a few months later they get
15 the approval hopefully, and then they get their own
16 final unit later in the process.

17 Q. So in addition to the 40 clinical
18 specialists and sales representatives that Ossur
19 employs, how many more employees are part of that
20 expanded team of folks who help with after sales
21 and customer service?

22 A. It's tough to say. I mean, I know we have
23 two dedicated resources in the main warehouse that
24 are taking care of nothing but the pool of bionic

1 products, loaner pools, shipping back and forth the
2 service units and such. We have a bionics
3 specialist on the customer service team that is
4 dedicated to bionics, but he's also dedicated to
5 train the others to have a basic knowledge on
6 bionics. So it's kind of a repetitive team that
7 within the different subdepartments we have
8 dedicated folks that take care of the bionics as
9 well.

10 Q. You mentioned before that for the sale of
11 mechanical knees that this level of support is not
12 necessary to make the sale; is that correct?

13 A. That is right. Obviously if a knee breaks
14 down we will provide a loaner unit as well so the
15 patient can continue to walk, but we don't
16 typically provide a knee for trial and then
17 that's -- you try it, you buy it kind of principle
18 there.

19 Q. Why is that the case?

20 A. Because let's say it's more
21 straightforward. You pretty much know what you're
22 going to get, the investment is lower as well. So
23 we want to make sure that if somebody tries to
24 purchase a 15-, 20,000-dollar microprocessor knee

1 that they don't regret it the next day, come back
2 and want to switch. So therefore we give them the
3 time, two weeks, three weeks to test the knee out
4 and make up their minds.

5 Q. When we're talking about the liners that
6 Ossur offers, is this level of sales support and
7 specialization required for the sale of liners?

8 A. To an extent, yes. It depends. If we
9 bring out new liner types, then that goes with the
10 necessary education, but across the board I would
11 say it's fair to say that the majority of the
12 clinical specialist's time goes into more bionic-
13 related tasks.

14 Q. Ossur also uses some distributors; is that
15 correct?

16 A. That's right.

17 Q. How does Ossur provide the service and
18 support that we just talked about when it sells
19 through distributors?

20 A. So we do not sell bionic products to
21 distributors for that exact reason. They cannot
22 provide the clinical support. They would not be
23 able to provide the technical support and customer
24 service, tech support with whatever is required.

1 So therefore we limit distribution to a selection
2 of mechanical products.

3 Q. Just to be clear, all of Ossur's bionic
4 sales for microprocessor knees are done directly
5 through Ossur?

6 A. Correct. Yes, that's correct.

7 Q. Now, we spoke earlier of how Nabtesco does
8 not have a sales force in the United States. How
9 do you think that's impacted Nabtesco's sales in
10 the United States of its microprocessor knee?

11 A. I'd say there's no doubt that if you don't
12 have a direct sales force you're not as likely to
13 be successful.

14 Q. Respondent's counsel also mentioned the
15 Very Good Knee this morning and I think you had
16 identified it as a mechanical knee; is that
17 correct?

18 A. Yes.

19 Q. And I think you also mentioned that it
20 competes primarily with Ossur's Mauch Knee, which
21 is a mechanical knee?

22 A. That's right. Not to say they didn't
23 make an effort to try to position themselves in the
24 hybrid or microprocessor knee space, but as soon as

1 it became clear there was no microprocessor in the
2 knee that kind of faded away. Like I mentioned
3 earlier today, there is very little Very Good Knees
4 sold in the United States.

5 Q. I believe you also mentioned that some
6 patients prefer some of the features of the Very
7 Good Knee. Were you referring to some mechanical
8 knee patients that might prefer the Very Good Knee
9 features over other mechanical knees?

10 A. I'm not sure. I think they might have
11 been just a random selection of patients that tried
12 this knee. I think, you know, there was a lot of
13 trying of that device when it came to the United
14 States, there was a lot of trying when it came to
15 the German market as well. So the feedback I got
16 was not specifically from patients that ended up on
17 it. It was just patients that had tried it in
18 comparison to their other devices.

19 Q. Do you have a sense of what Ossur's market
20 share in microprocessor knees is today?

21 A. In the United States?

22 Q. Yes.

23 A. I would say it's between 22 and
24 25 percent.

1 Q. What about for Otto Bock?

2 A. We estimate that that is in the range of
3 50 -- just over 50 percent.

4 Q. And what about -- does that include
5 Freedom or does that exclude Freedom?

6 A. That excludes Freedom.

7 Q. What market share would you estimate
8 Freedom had prior to its acquisition by Otto Bock?

9 A. My estimate is in the range of 12 to
10 15 percent.

11 Q. How about for the Orion?

12 A. The Orion, I would estimate that one to be
13 between 5 and 8 percent market share.

14 Q. How long has the Orion been on the market?

15 A. I don't know when they launched it under
16 that exact name. It was preceded by the Adaptive
17 Knee, but at least for the last four and a half
18 years when I was in the United States the Orion was
19 a competitive product.

20 Q. In that time have you seen the Orion gain
21 market share or has it remained relatively stable?

22 A. I think it has increased its market share.

23 Q. Has it been slowly increasing or quickly
24 increasing?

1 A. I couldn't tell you that with certainty.

2 Q. Compared to the Plie and the C-Leg, does
3 Ossur monitor the prices of the Orion
4 microprocessor knee?

5 A. We can't monitor them objectively, but we
6 do get random feedback from customers as to how
7 much they pay for that device, yes.

8 Q. And do you hear much feedback from
9 Nabtesco?

10 A. Rather limited.

11 Q. Beyond these players that we just
12 discussed, Otto Bock, Freedom, Endolite and
13 Nabtesco in the United States, are you aware of any
14 other microprocessor knee manufacturers that are
15 outside of the United States beyond those that are
16 currently in the United States?

17 A. I am not aware of any other suppliers that
18 have a microprocessor knee today, not commercially
19 available at least.

20 Q. Who's the current market leader for
21 microprocessor knees?

22 A. Otto Bock.

23 Q. When did Otto Bock enter the
24 microprocessor knee market?

1 A. I believe it was in 1999.

2 Q. Was it the first to enter?

3 A. There's discussion about that. There's
4 talk that the Adaptive Knee was. Let's say it was
5 the first good microprocessor knee that came to
6 market.

7 Q. Fair.

8 When did Freedom Innovations enter the
9 market?

10 A. With the microprocessor?

11 Q. Yes.

12 A. I'm not sure of the exact date, but it
13 must have been in the range of the last seven,
14 eight years.

15 Q. What happened in terms of pricing within
16 the market once Freedom entered with its
17 microprocessor knee?

18 A. So Freedom positioned their knee rather
19 quickly, not list price wise aggressively, but
20 discount wise quite aggressively. They chose to
21 pursue their opportunities with Hanger being big
22 volume with a company that is able to provide their
23 service mostly themselves. So the pressure from
24 Hanger on microprocessor knees pricing did

1 increase, but the effective decline of pricing I
2 think has been rather limited basically because I
3 think both Ossur and Otto Bock just pride
4 themselves on innovation, on premium products, and
5 there hasn't been a whole lot of giving in to
6 newcomers on the market to at least compete on
7 price. We just try to compete on functionality and
8 quality primarily.

9 Q. Did you see Otto Bock respond to Freedom
10 in terms of pricing or features when Freedom
11 entered the market?

12 A. I wasn't there at the time, but there have
13 been periods of time where there's temporary
14 discounts, temporary promotions that are being
15 given and you see people respond. Not necessarily
16 with decreasing the knee price, but possibly the
17 combination of a knee and a foot that then leads to
18 a better buy for the customer. We have mostly
19 refrained from that, but let's say that the
20 pressure has been quite high to do it and I know
21 that historically, five, six years ago, there was a
22 time where we actually went along with that, but
23 then to return to the regular pricing after that
24 promotion period was over.

1 Q. As far as the promotions go, you mentioned
2 the combination of a knee and foot, did you see
3 that promotion offered by Freedom or by Otto Bock?

4 A. Freedom has led that throughout the years.

5 Q. Did Otto Bock start offering a similar
6 type of promotion?

7 A. Not that I'm aware of. Freedom's
8 promotion typically was you buy the knee you get
9 the foot half off, and that came up again and again
10 at random intervals.

11 Q. In your experience, are microprocessor
12 knees often sold with a foot in the same sale with
13 clinicians?

14 A. It depends on what the patient's situation
15 is. If it's a new patient it's highly likely that
16 they will order a system. If it is a patient that
17 gets a renewal, depending on whether the foot is up
18 for renewal as well, it might be a single knee, it
19 might be a knee and a foot. Occasionally they'll
20 buy a knee from one and purchase the foot from
21 someone else. That happens as well.

22 Q. Does Ossur encourage the purchase of an
23 Ossur foot to compliment an Ossur microprocessor
24 knee?

1 A. Absolutely.

2 Q. Why do you do that?

3 A. There are specifications to the dimensions
4 of a fit of the products together that for sake of
5 quality and for sake of safety we recommend
6 products to be combined. They're designed to
7 function together, therefore we recommend them to
8 be used together. With that we're hoping to
9 prevent potential premature failure of the devices.
10 So it is a trend that we've seen increase over the
11 last few years that suppliers do recommend their
12 components, their feet to be used with their knees
13 to avoid that certain triggers of a knee would be
14 disturbed by a foot that it doesn't recognize or
15 hasn't been tested with or, more dramatically,
16 failure because components simply don't match up,
17 dimensions don't match up, and you end up with
18 breakage of components because of it.

19 Q. What portion of Ossur's microprocessor
20 knees are sold together with an Ossur foot?

21 A. I could not tell you an exact number
22 there.

23 Q. Would it be -- can you estimate?

24 A. I would put it in the ballpark of

1 50 percent, 60 percent. That doesn't mean that
2 they're bought or purchased on the same day as the
3 knee, but people that utilize a Flex-Foot with a
4 Rheo Knee it's highly likely. So it might even be
5 in the 60 to 70 percent range.

6 Q. Does Otto Bock encourage that its
7 microprocessor knee be sold together with its foot
8 as well?

9 A. Otto Bock actually enforces it. They have
10 a stipulation that if it's used with another foot
11 than an Otto Bock foot you risk voiding the
12 warranty of the device.

13 Q. Is it important for a microprocessor knee
14 company like Ossur to also have a foot portfolio to
15 sell with its knees?

16 A. I would say yes. Microprocessor knees,
17 like explained, they have sensors, those sensors
18 are reading information that comes from the contact
19 to the ground, that contact is made through the
20 foot. So when you have tested them together with a
21 foot that has a certain flexibility, that has a
22 certain length, obviously bigger feet, bigger
23 prosthetic feet, but what I mean is the carbon
24 fiber part of the foot, some feet -- in our feet it

1 extends further into the big toe, so to speak, that
2 results in a different stride for an Ossur foot
3 versus a Freedom foot or an Otto Bock foot or a
4 College Park foot, all of them, any of them. So if
5 that is different, then it's possible that the knee
6 would recognize the stride differently and thereby
7 make the wrong decision on whether it is in stance
8 or swing. So more and more because these devices
9 are tested together they should be utilized
10 together as well.

11 Q. We spoke earlier of Freedom's entering
12 into the microprocessor knee market. I think you
13 mentioned that Freedom came in and started offering
14 lower prices than the C-Leg and the Rheo. Did
15 Freedom continue to be more of a price play as it
16 continued to participate in the market?

17 A. Yes. So when they brought the
18 microprocessor knee their feet had been in the
19 market for quite some time and their discount
20 levels kind of transgressed into the pricing for
21 the microprocessor knees. It's fair to say -- and
22 we saw it in the due diligence as well -- that
23 their trend throughout the years has been increased
24 compromise on price for sake of gain in market

1 share.

2 Q. Based on what you have seen in due
3 diligence, did you get a sense of whether the
4 microprocessor knee sales within Freedom were
5 dependent or needed the foot sales to help support
6 the profitability of the business?

7 A. Thinking back to the numbers I saw there,
8 but from our experience the mechanical feet are
9 more profitable than the microprocessor knees when
10 it comes to gross profit margin. So it's
11 definitely a benefit to be able to sell the foot
12 along with the knee to increase the overall profit
13 of the system.

14 Q. In terms of features and functionality, I
15 understand that the most recent iteration of the
16 Rheo now offers water resistance. What was the
17 impetus for Ossur to implement that change in its
18 most recent Rheo?

19 A. So it's not water resistant. It's
20 weatherproof. Again, water resistance would be
21 submersible. Weatherproof means you can walk out
22 in the weather, it rains, you get a splash on it,
23 it's fine. The reason we did that was basically
24 market demand. Plie came out with a waterproof

1 version, then the C-Leg upgraded as well, and it
2 kind of just made it a necessity for us to move in
3 the same direction.

4 Q. Have there been any other innovations or
5 features that the Plie has implemented that Ossur
6 has found the need to also offer in its Rheo?

7 A. Not really. I think this was their way to
8 take a knee that was subperforming and to give it a
9 feature that was very much wanted and make it more
10 competitive.

11 Q. Based on your experience, have you seen
12 Otto Bock respond in terms of any other types of
13 features to the Plie as well?

14 A. Not so much, apart from the waterproofing,
15 yeah.

16 Q. You mentioned earlier that Ossur sets the
17 price of its microprocessor knees in order to
18 capture the value that the knee offers to the
19 patient. Does Ossur ever set the price of its
20 microprocessor knees against the price of
21 mechanical knees that are available on the market?

22 A. Not really because they don't really
23 compete for the same population. And with
24 population I want to specify I'm talking about

1 people with access to certain funds. If they have
2 access to a microprocessor knee, they'll buy a
3 microprocessor knee. If they don't, then they'll
4 buy a mechanical knee.

5 Q. We spoke a bit about microprocessor knees
6 and the relationship to feet. In terms of
7 manufacturing within Ossur, are the microprocessor
8 knees manufactured in a separate facility from the
9 feet or is the manufacturing combined all together?

10 A. So they're in the same building, they're
11 in a different location, they're a separate room.

12 Q. Do you employ any of the same equipment
13 for the manufacture of the microprocessor knees and
14 Ossur's feet?

15 A. No.

16 (DeRoy Exhibit 12 was marked
17 as requested.)

18 BY MS. LAO:

19 Q. I'd like to show you a document that's
20 been marked for identification as PX-03103-001.
21 It's been marked for identification as DeRoy
22 Exhibit 12. It appears on its face to be a product
23 profile presentation that was last saved on
24 March 12, 2018. It ends in PX-03103-025. Do you

1 mind taking a moment to familiarize yourself with
2 DeRoy Exhibit 12.

3 (Witness reviewing document.)

4 BY THE WITNESS:

5 A. Yes.

6 Q. Have you reviewed DeRoy Exhibit 12?

7 A. Yes.

8 Q. Do you recognize the document?

9 A. I recognize the type of document. I don't
10 believe I have reviewed this one in particular.

11 Q. What is it?

12 A. So it is a product profile which is part
13 of the input session for new product development
14 where we describe pretty much what we expect a
15 product to look like, what we want to claim about
16 the product, how we want to position the message
17 about the products.

18 Q. Do you have knowledge of DeRoy
19 Exhibit 12's contents?

20 A. I do, yeah.

21 Q. Was DeRoy Exhibit 12 created at or near
22 this time that Ossur was planning a product launch
23 of the Rheo Knee and the Rheo Knee XC?

24 A. Actually I can't tell with certainty

1 because the date that is on here actually states
2 that it was last saved on Monday, March 12th and
3 that is not coinciding with any recent launches.
4 The date that it states on the inside description
5 of changes is August of 2017, and that does
6 coincide with the time of launch of the product.
7 So those two dates are different.

8 Q. I understand. So it appears that DeRoy
9 Exhibit 12 was likely created around August of
10 2017, then; is that correct?

11 A. I would say -- well, last revision date
12 was then. So it's likely that at that time it was
13 finalized, yes.

14 Q. Is it Ossur's practice to create these
15 types of product profiles in the ordinary course of
16 Ossur's regularly conducted business?

17 A. Absolutely.

18 Q. Is Exhibit 12 a true and accurate copy, to
19 the best of your knowledge?

20 A. It represents what we expect to be in the
21 product profile, yes.

22 Q. Could you please turn to PX-03103-007. If
23 you look toward the bottom of the page, the second
24 paragraph up, it reads "The main limitations of the

1 current product offering have been identified as
2 perceived lack of stability for insecure uses and
3 lack of control, stability, or support in stair and
4 ramp descent." What is this statement referring
5 to?

6 A. So as I explained the difference between
7 hydraulics and magnetorheologics, hydraulics have a
8 tendency to be stance default. Because of the fact
9 that you're pushing the fluid from one chamber to
10 the next it creates a higher level of resistance.
11 That resistance is perceived by the patient to be
12 somewhat more stable. It yields, bends when you're
13 walking down stairs in a more consistent and
14 controllable manner. So that's what we're stating
15 here, that the limitations of Rheo in order -- if
16 it were to be a direct competitor to C-Leg these
17 would be the things we would have to improve to the
18 Rheo Knee to allow us to grow into the segment.

19 Q. Is the C-Leg the competition that this
20 document is referring to in the next sentence down
21 Where it states "The Rheo Knee demands correct
22 alignment and confident usage of the prosthesis to
23 perform optimally as opposed to the competition"
24 and the sentence continues?

1 A. Yes. So this is mostly referring to
2 hydraulic knees in general with C-Leg being the
3 main product obviously, but that's one of the
4 things that they shared is that similar type of
5 yielding response and that's exactly what we're
6 referring to here.

7 Q. And as we discussed before, the hydraulic
8 knee includes the technology that is employed by
9 the Plie?

10 A. By Plie and C-Leg and then also by the
11 Orion.

12 Q. Then the next paragraph down states "The
13 Rheo Knee aesthetics have also been criticized for
14 being boxy, utilitarian, and outdated rather than
15 anatomically high end and modern." What is this
16 statement referring to?

17 A. This is just the look of the product, that
18 the human body is rounded, it doesn't have a lot of
19 edges, it's quite curved, and the feedback that we
20 got there is that it was not smoothly fitting into
21 the normal anatomics. So one of the goals was to
22 make it more anatomical.

23 Q. And who provided this criticism?

24 A. It was discussed in the feedback

1 typically, customer and user feedback.

2 Q. And how is this feedback used in terms of
3 Ossur's product development?

4 A. It would define our design criteria for
5 the future products.

6 Q. Could you please turn to PX-03103-015.

7 A. Yes.

8 Q. In the box that lists main competition do
9 you see the products that are listed there?

10 A. Yes.

11 Q. It appears to be main competition would be
12 for Rheo Knee, the C-Leg 4, and Plie 3. Is that a
13 correct reading of the graph?

14 A. That is correct.

15 Q. Why are the Orion and Nabtesco knees not
16 listed here?

17 A. Because the market -- the majority of the
18 market as we talked about, the market share, the
19 majority of the market is made up of these three
20 knees. Well, these three -- yes, these three knees
21 and then the variants of those knees. So C-Leg 4,
22 the Genium and Rheo Knee and Rheo Knee XC combined
23 with the Plie, those three in my estimate would be
24 85 percent of the market.

1 Q. Looking down toward the middle of the
2 chart there's a row called "Customer margin." What
3 does that customer margin refer to?

4 A. So you have a list price. If you take the
5 example of Rheo Knee, \$19,300, you have a
6 reimbursement level and, like I explained, this is
7 not a fixed number. It goes from a floor up to a
8 ceiling, depends on which state you're in. We
9 typically pick the mid-range of that. You deduct
10 the list price from the reimbursement price, you
11 end up with a customer margin. So as explained
12 earlier, customer margin, it can vary from around
13 \$10,000 to \$14,000, and in this case when you look
14 at the list price, it's around \$7,500, \$8,000.
15 Whereas if you then look at the average sales
16 price, you're more in the range of that \$10,
17 \$11,000.

18 Q. But customer margin is one of the factors
19 that Ossur considers when it's looking at its
20 competition?

21 A. Yes. And it's one of the factors
22 customers consider when they're purchasing the knee
23 as well.

24 Q. On the next page we see a product profile

1 that includes the Rheo Knee XC, the Genium, and the
2 X3. Does that reflect the main competitive set
3 that we spoke about earlier today for the Rheo Knee
4 XC?

5 A. We didn't talk about the X3, but I think
6 the majority of the competition is between Rheo
7 Knee XC and Genium and the X3 is a bit of an
8 outlier that is mostly sold within a very select
9 segment of the market.

10 Q. Thanks. You can set that aside.

11 A. All right.

12 Q. I'd like to talk a bit about entry into
13 the microprocessor knee market. If you're a
14 de novo entrant, what assets are necessary to offer
15 a microprocessor knees?

16 A. De novo as in absolutely no current part
17 of prosthetics or potentially a prosthetics company
18 that is bringing their first microprocessor knee?

19 Q. Sure. A prosthetics company that has very
20 little experience with either -- no experience with
21 microprocessor knees and very little experience
22 with mechanical knees.

23 A. I think it's challenging for sure. I
24 think when I look at the history of Ossur it took

1 us a significant amount of time to get a good
2 foothold in the market with our Rheo knee. Same is
3 the case for Otto Bock and it took time for Freedom
4 as well to establish themselves. So the reason why
5 it's difficult is because of the things I mentioned
6 earlier, clinical support you need, technical
7 support you need. It is quite labor intense to
8 maintain the product as well. So apart from having
9 the foothold in the market with the local
10 representation and the clinical support, there's
11 the R&D side as well where just the maintenance of
12 the product itself is very costly and does absorb
13 quite some resources both from R&D and from M&O.

14 Q. If a company doesn't have any experience
15 with an extensive sales force like what we had
16 discussed earlier, how difficult is it to get up
17 and running?

18 A. I think it's fair to say that it is very
19 difficult. I think we have some examples in the
20 market with Nabtesco. I think Endolite could serve
21 as an example as well where they have made some
22 inroads, but it is still limited and a lot of that
23 has to do with just the local representation. It's
24 a labor-intensive process to convince people that

1 you have a microprocessor knee that is a good or
2 better alternative to what they already use let
3 alone the fact that all the service aspects that
4 come with it as well are just costly for a company
5 to put in place.

6 Q. What's involved in the maintenance of a
7 microprocessor knee?

8 A. So typically the knees are expected to
9 last without any checkups for a period of about
10 three years. Reimbursement approves a new unit
11 every three to five years. So it is not unusual
12 that those knees are sent in for service after
13 three years to then kind of set themselves for a
14 fresh start for the last two years of utilization.
15 So for the prosthetist, however, those patients
16 come in on a regular basis for checkup, for
17 verification, see whether everything's functioning
18 well, potentially reprogramming somewhat, but that
19 is part of the overall maintenance of the
20 prosthetic leg.

21 Q. Earlier today when you were speaking with
22 Respondent's counsel about how quickly someone
23 could enter if they have acquired all of Freedom, I
24 think you had mentioned that someone could enter

1 almost immediately; is that correct?

2 A. So I think -- it's a difficult question,
3 but the way I understood it was that if you were to
4 acquire the business from Freedom how long would it
5 take you to have the representation. I interpreted
6 it as we were talking about to have the same amount
7 of sales. Obviously as you acquire the sales you
8 have the sales. If a company were to acquire the
9 products but not have the sales force to support
10 it, not have the infrastructure to support it or
11 the service around it, it is likely that they would
12 struggle maintaining that current business in the
13 market. And if we're then referring to the ongoing
14 development project, it would be a challenge for a
15 new company with no microprocessor experience to
16 take a project in development like the Plie Quatro
17 and bring that to completion and then bring it to
18 market within an acceptable amount of time and
19 especially within an acceptable budget for a
20 smaller sized company.

21 Q. Likewise in order to bring the Plie Quatro
22 to market would it present additional challenges if
23 only part or not all of the engineering folks were
24 to be acquired with the business?

1 MR. McCONNELL: Objection to form.

2 BY THE WITNESS:

3 A. Can you restate that question?

4 Q. If a new company were looking to enter
5 with the Freedom assets in microprocessor knees,
6 would it present additional challenges if that
7 company did not also acquire the engineers that are
8 currently working on the Quatro?

9 MR. McCONNELL: Same objection.

10 MS. SULLIVAN: Objection to form.

11 BY THE WITNESS:

12 A. Okay. So in my experience and the
13 company's experience when we acquired the Rheo Knee
14 we acquired people along with the project that
15 continued to work on the project. It was essential
16 to understand the technology, it's essential to be
17 able to bring the project forward. So based on
18 that experience I would say that you would
19 definitely gain from acquiring the technology
20 knowledge that comes with the product. However, an
21 experienced engineering team could probably crack
22 the code and be able to continue development.
23 Again, you would have to have a team that is
24 experienced in electronics, software, and

1 mechanical components of a bionic device to be able
2 to bring it to a good completion.

3 Q. Aside from engineers, what other assets
4 are needed in order to be a competitive
5 microprocessor knee company in the U.S.?

6 A. You need capital. Like I explained
7 earlier, part of the process of getting a patient
8 to accept the microprocessor knee is to provide
9 them with a loaner unit. Those loaner units are --
10 especially on a global level but also in the United
11 States, we're talking about almost a hundred units.
12 So considering that investment, that is
13 considerable investment, those units need to be
14 refurbished, they need to be maintained between
15 patients. So you need a whole service setup to be
16 able to manage that portfolio. So that's the first
17 thing you need because without the trial they're
18 very unlikely to actually successfully sell the
19 product. People, like I said, when they spend
20 \$20,000 on that type of knee they want to try the
21 knee before they buy it. So I think that's one
22 part, the capital needed to make that investment to
23 purchase those -- or to produce those knees that
24 are not going to return on investment because

1 you're not selling them.

2 Second to that you would need the customer
3 service set up, what I explained earlier, the
4 people in the warehouse that are managing the pool
5 of loaners, the specialists in customer service,
6 the clinical staff. There's significant training
7 that comes to the salespeople as well. Not to
8 mention the fact that in Iceland we have a full
9 center dedicated to incoming units that need
10 servicing and repair and that's quite a department
11 there as well.

12 Q. How specialized is the manufacturing
13 process for microprocessor knees?

14 A. Well, I would say it's unique given the
15 fact that especially for Ossur the MR technology is
16 not deployed in a whole lot of different types of
17 industries in contrast to hydraulics, but it is a
18 specific population. So it is fairly unique the
19 way it is set up.

20 Q. Does it require specific expertise by
21 human beings or can the process for manufacturing
22 be automated for microprocessor knees?

23 A. The subassembly of parts is always done
24 completely by humans and to the extent that quite a

1 bit of testing of the devices is done by actual
2 users, amputees as well.

3 Q. What's the importance or lack of
4 importance of brand when it comes to the sale of
5 microprocessor knees and reputation?

6 A. I would say that it's very important. I
7 think that we can tell that the first to market
8 legacy name of the C-Leg is one that holds very
9 strong both amongst users and amongst prosthetists.

10 Q. Apologies for returning back to
11 manufacturing, but how many suppliers does Ossur
12 have for the component parts for a microprocessor
13 knee?

14 A. I couldn't tell you. It's definitely more
15 than 15.

16 Q. Are you aware of whether Ossur obtains any
17 volume discounts for these types of inputs for the
18 microprocessor knee?

19 A. Relative to what those suppliers are
20 dealing with, we are rather small in volume. So
21 we're not getting any true privileged treatment
22 there.

23 Q. Is there anything else that is challenging
24 or unique about microprocessor knee manufacturing?

1 BY MS. LAO:

2 Q. Mr. DeRoy, I'd like to talk about Ossur's
3 foot business if that's okay.

4 A. Yes.

5 Q. What are the differences in the types of
6 prosthetic feet that Ossur offers?

7 A. You mean differences within our range or
8 differences between ours and competition?

9 Q. Differences within Ossur's product
10 portfolio of feet.

11 A. So we have a fairly vast portfolio, I'd
12 say about 20 feet, where some of them, the most
13 limited group is dedicated to the low active K1, K2
14 users. Then you have a group of energy storing and
15 returning feet that are dedicated to the K3 user
16 group where features are limited. It's just a
17 carbon fiber device that sometimes combines
18 composites that allow for flexibility and energy
19 return so that a patient can walk naturally. Then
20 there's a group of products that includes vertical
21 shock and rotation components that will allow for
22 specific activities, let's say people playing golf,
23 turning on their feet, people working in a standing
24 position, moving things around that would require

1 some extra shock dampening, that's what we would
2 get. Then we have a set of feet on the higher end
3 where the shock absorption is provided by a more
4 rugged type of design and that's for those what
5 would run on it or would be lifting heavy weights,
6 high active.

7 Q. What K level would be associated with the
8 higher end feet?

9 A. That would be F4, high-end K3.

10 Q. Is the foot business similar to the
11 microprocessor knee business in that only certain
12 types of -- only feet that are designated for
13 certain K levels can be sold or used for patients
14 that have that level of mobility?

15 MR. McCONNELL: Objection to form.

16 BY THE WITNESS:

17 A. I got the question. Yes. So there is --
18 a K2 patient typically cannot receive a carbon
19 fiber foot. So that's where the limited version of
20 glass fiber feet that we have is in the lower end
21 and you have to be a K3 user to be able to qualify
22 for the carbon fiber feet, and then you have to be
23 also that to qualify for the shock absorption feet
24 and such.

1 Q. Which types of prosthetic feet within
2 Ossur's portfolio are most often paired with
3 Ossur's microprocessor knees?

4 A. The pure carbon fiber K3 feet and in some
5 cases those would be the shock and rotation
6 components as well.

7 Q. Who does Ossur view to be its competitors
8 in the prosthetic foot market?

9 A. So that market is actually quite large.
10 We have Freedom as a close competitor, we have Otto
11 Bock, we have the Endolite company, we have Rush,
12 Fillauer, Streifeneder, College Park, TruLife, and
13 then some companies in Asia that aren't playing in
14 the Americas market but in a global perspective,
15 yes.

16 Q. Have you heard of a company called Ability
17 Dynamics?

18 A. Yes. So that's the company that sells the
19 Rush foot.

20 Q. And have you heard of a company called
21 Ohio Willow Wood?

22 A. Yes. Their primary part of their business
23 is liners, but they do have some feet as well.

24 Q. Is it fair to say there are more

1 competitors in the prosthetic foot market than in
2 the microprocessor knee market?

3 A. Yes.

4 Q. Why is that the case?

5 A. Because feet have been around longer than
6 microprocessor knees, that's one. Two, because
7 the level for entry into the feet part of
8 prosthetics is lower, so the barriers are lower.
9 So you don't need necessarily all the service
10 around feet as you have it set up for bionics.
11 There has been more expiring IP on the feet side
12 which has allowed companies to come in with
13 copycats of existing feet. Those would be like the
14 three main reasons.

15 Q. How did Otto Bock's foot portfolio compare
16 to Ossur's?

17 A. Ours is definitely more complete. I think
18 Otto Bock's portfolio is not as good as ours. They
19 acquired a company called Springlite quite some
20 time back and that established their foot line from
21 low active to high active, but I wouldn't -- I
22 wouldn't say that they're the same exact level of
23 innovation as we're at with our feet.

24 Q. Who is Ossur's closest competitor when it

1 comes to prosthetic feet?

2 A. I would say Freedom probably was as well
3 as College Park, the Ability Dynamics company in
4 the United States for sure, Fillauer is an up and
5 coming company as well. So there's no real close
6 second except for Freedom. There's been a couple
7 others that are combined third, fourth place in a
8 way, and Otto Bock is obviously one of those as
9 well.

10 Q. You mentioned Fillauer and College Park.
11 How does Ohio Willow Wood's offering compare to the
12 others out there today?

13 A. It's limited. It's more focused on --
14 let's say they have a portfolio, they could serve
15 K2, K3 patients, but it is limited.

16 Q. Are Ohio Willow Wood's prosthetic feet
17 able to be used with a microprocessor knee, as far
18 as you're aware?

19 A. Let's say that have people tried that, I'm
20 sure they have. We don't recommend it to be done
21 with our knees, just like Otto Bock doesn't
22 recommend it to be done with theirs, and I believe
23 most microprocessor companies don't recommend it to
24 be used with other feet than their own. If the

1 question is can they be used with those feet, given
2 the necessary adjustment to the function of the
3 knee, then absolutely, but it would just take time
4 to redesign the algorithms in the knee to make sure
5 that the knee responds well to the type of foot
6 that is below.

7 Q. Does Otto Bock gain sales in its
8 prosthetic feet through the sale of its C-Leg 4?

9 A. Yes. I think that's yes given that they
10 recommend -- strongly recommend and even void
11 warranty in cases if the correct feet is not used.
12 So without that knee they would sell less feet.

13 Q. As we discussed, the C-Leg 4 is one of the
14 market leaders in microprocessor knees, correct?

15 A. It's the market leader.

16 Q. How does Endolite's foot offering compare
17 to the others on the market today?

18 A. They have a reasonable assortment of feet.
19 They did specialize in part of the feet that is
20 more utilizing hydraulics in the ankle to adjust to
21 the terrain. They definitely have made a good name
22 for themselves within that segment. I want to say
23 they are the market leader within the segment and
24 it's one where we haven't really tapped into all

1 that much.

2 Q. I'd like to talk a bit about the
3 acquisition of Freedom Innovations as well as
4 Ossur's consideration of acquiring Freedom
5 Innovations' business. When did Ossur first learn
6 that the Freedom Innovations business was for sale?

7 A. That must have been in the time frame of
8 June of 2017.

9 Q. And what was Ossur's reaction at the time?

10 A. We felt it was an opportunity that needed
11 to be evaluated.

12 Q. Who within Ossur was responsible for
13 contacting the Freedom team?

14 A. Most of the communication initially went
15 through our CEO and business development --
16 corporate development. Sorry.

17 Q. Did you have any direct interaction with
18 the Freedom employees about the potential
19 acquisition?

20 A. We had one meeting.

21 Q. What was that meeting about?

22 A. That meeting was basically about the
23 information that was provided to us in the first
24 stage of the due diligence and trying to -- or

1 giving the opportunity to ask questions about the
2 information that was provided to us. It was a
3 face-to-face meeting that was held in California.

4 Q. Why was Ossur interested in acquiring
5 Freedom?

6 A. So our history of growth is one of organic
7 growth and acquired growth, and given that we saw
8 opportunities in terms of complimenting parts of
9 our product line as well as an opportunity to gain
10 market share and turning that into profitable
11 market share, we believed that it was a good thing
12 to pursue the acquisition.

13 Q. Did Ossur make a preliminary offer for the
14 Freedom business?

15 A. We did.

16 Q. When did that occur?

17 A. That was in July of 2017.

18 Q. What was the offer amount that Ossur made?

19

20 Q. Were you aware of any other bidders at the
21 time?

22 A. We had a suspicion, but I wonder -- yeah,
23 we had a suspicion at the time, but there was no --
24 we had no confirmation.

1 Q. Who did you suspect was also bidding on
2 the business?

3 A. We were suspect that Otto Bock was in the
4 process as well.

5 Q. Did Ossur have the ability to conduct due
6 diligence during the acquisition process?

7 A. We did, albeit quite limited.

8 Q. What materials did Ossur review?

9 A. We reviewed income statements, P&L's of
10 Freedom. We reviewed market-specific reports on
11 product sales, customer sales. We reviewed their
12 corporate structure setup, locations, employees,
13 reviewed their IP portfolio. We reviewed their
14 pipeline. I think that pretty much sums it up.

15 Q. And were you aware of the amount of debt
16 that Freedom was in when Ossur made its bid?

17 A. I do believe we had that information, yes.

18 Q. That was included in the financials and
19 the P&L's; is that correct?

20 A. If I'm not mistaken, yes. It's not the
21 part that I specifically dug into given that I was
22 more focusing on the marketing side, but yeah.

23 Q. You mentioned new product lines. What did
24 Ossur evaluate in terms of new product lines?

1 A. So we looked at their pipeline of more
2 specifically the microprocessor ankle they have in
3 development, and then quite a bit of focus went to
4 the Plie Quatro that they have in development as
5 well.

6 Q. What were your impressions of the
7 microprocessor ankle?

8 A. So we didn't really get to see the product
9 in action. We do understand the basic technology,
10 there's equivalence of that product on the market
11 already, but what we learned was that it was still
12 in a phase where they had a lot of returns, they
13 had a lot of costs related to those returns, and at
14 that stage I think that was one of the contributors
15 to the lack of profits that Freedom was able to
16 present. It was also one of the explanations they
17 gave to their poorer performance on the
18 profitability side at the moment.

19 Q. The ankle specifically was the reason that
20 they gave for --

21 A. Yes. Heavy investment in R&D, the
22 purchase of materials to have trial units
23 available, units that had gone out that had to come
24 in again for servicing and upgrades. So that was

1 definitely one of the factors contributing to the
2 increased costs in the prior one and a half years I
3 would say until we reviewed the company.

4 Q. Those increased costs, did that apply to
5 the Quatro development as well?

6 A. I'm sure that was part of it as well. The
7 costs that I'm referring to were detected in a
8 different line item in the P&L where in a previous
9 year, 2015, I believe their return and repair cost
10 was in the range of .7 million and that had
11 increased to 2.1 million in the year 2016. That
12 was an explanation that we were given was that that
13 was due to the increased costs related to the
14 ankle. The knee, which is in an R&D process, there
15 the cost was recognized within the increased costs
16 and investment within R&D. So it was very clear
17 that within the last few years they had
18 significantly invested to develop the knee and to
19 co-develop the ankle at the same time. So two main
20 explanations from them as to why their profit was
21 where it was.

22 Q. Did you have evaluate the IP related to
23 the knee as well?

24 A. I did not.

1 Q. Did Ossur conduct an evaluation of
2 Quatro's IP?

3 A. I couldn't answer with certainty. We did
4 a general review of their IP.

5 Q. Are you aware of whether the IP between
6 the Quatro is related to the ankle that was also in
7 development?

8 A. I'm not sure whether there's any
9 overlapping protecting IP, no.

10 Q. I'd like to talk briefly about the Quatro.
11 Did Ossur have a chance to conduct any direct
12 evaluation of any Quatro product?

13 A. No. We inquired about that, we requested
14 to have that done, but that request was not
15 granted.

16 Q. And based on your interactions with
17 Freedom, what was your impression of the Quatro
18 Plie product?

19 A. So our impressions were based on the sales
20 pitch we got on how good the product would be, it
21 was positioned as a product that would be a direct
22 competitor to the C-Leg, and based on our requests
23 to actually get physical experience and be
24 objectively evaluating the product, we got -- in

1 response we got video footage that we used to
2 evaluate some of the basic functionalities.

3 Q. If you could please take out Exhibit 11,
4 DeRoy Exhibit 11. Do you remember this exhibit?

5 A. I do.

6 Q. I believe that there was some discussion
7 this morning with Respondent's counsel about the
8 videos that we just discussed. If you look down in
9 the first line of the e-mail under "BLUF," it
10 states "It's nearly impossible to draw any
11 conclusions from the videos provided." Was the
12 rest of this e-mail related to those videos that
13 were provided by Freedom?

14 A. Yes. This was the summary in response to
15 my evaluation of the footage that I had received.

16 Q. So it sounds, then, like it was very
17 difficult to actually evaluate the Quatro based on
18 those videos, correct?

19 A. Yeah. So the video interpretation kind of
20 needs to be split up into two parts. The question
21 I'm asked from my superiors is should we
22 increase -- or should we consider this as added
23 value to the purchasing price of Freedom. To that
24 my answer is clear that with the footage that was

1 provided to me I cannot confirm, nor really reject
2 the fact that this knee is, in fact, going to take
3 a ton of market share from the competitive product.
4 From a functional perspective -- and with
5 competitive product I mean, the C-Leg as they
6 positioned it. From a functional perspective what
7 I saw in the video did confirm that -- it did show
8 functionalities that showed promising results in
9 comparison to the Plie, although not necessarily
10 superior to what we see in the C-Leg. So it was
11 therefore impossible for me to really draw a
12 conclusion to say, yes, let's add value to the
13 offer based on the video footage that we received.

14 Q. So what other information would Ossur have
15 needed in order to fully evaluate the Quatro?

16 A. We would have preferred to get a unit of
17 the knee or to at least be able to go to their
18 facilities with our patients and have a patient
19 walk on it to be able to establish ourselves how
20 the knee behaved on inclines, declines, how it
21 behaved on stairs and such.

22 Q. And how was the Quatro described to you by
23 the folks you interacted with at Freedom?

24 A. We only spoke to David, the CEO, about the

1 Quatro and he was very much convinced that this was
2 going to be the product that was going to dethrone
3 the number one product in the market, the C-Leg,
4 and further information -- I only got further
5 information secondhand through the user that was
6 actually in the videos, and his feedback to us was
7 that after walking on the Rheo Knee in Iceland a
8 few months before he said that you guys don't
9 really have anything to worry about, it's a
10 different type of device, it doesn't respond the
11 way your Rheo knee dow, but from my experience on
12 the C-Leg it's clear they're heading in that
13 direction for sure. So with their position they're
14 definitely on the right track was the way he
15 positioned it.

16 Q. If Ossur had an opportunity to review and
17 test the Quatro, is it possible that Ossur might
18 have increased its bid value if it found favorable
19 results?

20 MS. SULLIVAN: Objection, calls for
21 speculation. You can answer.

22 BY THE WITNESS:

23 A. Actually I had a conversation with -- a
24 phone conversation with our CEO with respect to

1 what do we do. We don't have the information
2 required on the knee to really add it into the
3 valuation. Should we -- in the case where our bid
4 is found to be low or too low to be in the game,
5 should we consider making a higher bid? And my
6 comment to him was that I felt given the
7 positioning of the product that this company,
8 Freedom, would always have a higher value to Otto
9 Bock because there is clearly more of a direct
10 threat to their C-Leg 4 than there were to be for
11 our product. So no matter where we would bid I
12 would expect them to outbid us regardless. So
13 that's where we kind of stuck to our [REDACTED]
14 valuation partly because we didn't feel we had the
15 information to re-evaluate and partly because we
16 felt that any higher offer would just be exceeded
17 anyway.

18 Q. When did Ossur make its final offer for
19 Freedom?

20 A. I believe that was August of 2017.

21 Q. Between July and August did Ossur's view
22 of the Freedom business change at all?

23 A. I don't think so. I think our offer --
24 our confirmed offer kind of reflects that we valued

1 the company in the same way.

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Q. Was there any opportunity to rebid at that point?

A. Well, I'm sure we could have bid higher in our second offer, but we decided not to. We felt our valuation was appropriate.

Q. And is it fair to say that that [REDACTED] reflects the value that Ossur saw in the Freedom business?

A. Like I said, we felt that the bid was appropriate for the business as we evaluated it and with the information provided to us that is where we felt at that time we were able to position our offer.

Q. Did Ossur make any plans regarding what it would do with the Freedom products if it had moved forward with the acquisition?

A. Yes. We had various options open and one of them included a synergetic exercise where we would try to align both product lines and integrate them together, where we would eliminate some of the

1 Freedom products that are just direct copies of the
2 Ossur products given that, that's in the file as
3 well, our manufacturing technique has already been
4 automated, it has been professionalized over the
5 years, they were going into that exercise now. So
6 in terms of quality and reliability and appearance
7 of the product, we felt that our products were the
8 better positioned ones to continue with. So we had
9 that exercise done. That was one option.

10 We did have another option open where we
11 would just run the business simultaneously
12 separately and continue to run them as their model
13 with a different price point in a way in the
14 market.

15 Q. Did Ossur have plans to continue marketing
16 and selling the Plie products from Freedom?

17 A. We believe that there is a market out
18 there for a lower-priced microprocessor knee, The
19 market has shown that over the years, and for us on
20 a global level there's definitely opportunities to
21 enter into markets where reimbursement is not as
22 favorable with that type of product. So the Plie
23 would have definitely complimented our
24 microprocessor knee range.

1 Q. Similarly the next iteration or the newer
2 version of the Plie, the Quatro, did Ossur have
3 plans to continue marketing or continue developing
4 the Quatro as well?

5 A. We would have -- obviously with more
6 information about the product we would have
7 definitely considered to further develop the
8 product given that it fills a gap in the user
9 population between our Rheo Knee and where the
10 C-Leg is today. So that would have been a really
11 beneficial addition.

12 Q. I think you mentioned earlier that the
13 Plie sort of fills a lower price point in the
14 product spectrum for Ossur. Did Ossur plan to
15 continue offering the Plie at its current level of
16 pricing?

17 MR. McCONNELL: Objection to form.

18 BY THE WITNESS:

19 A. Can you rephrase that one?

20 Q. In terms of Ossur's plans for the Plie,
21 did Ossur intend to continue marketing the Plie at
22 its current price point?

23 A. We definitely would not have changed the
24 list price. I think it would have always remained

1 a knee that was in average sales price slightly
2 lower than the Rheo Knee, likely in the same range
3 where it is now, but we would have had
4 opportunities across the globe in other locations
5 where we're just better represented than Freedom is
6 to benefit the introduction of that product.

7 Q. Sitting here today, if the Freedom
8 business were preserved so it exists today as it
9 did when Ossur was interested in purchasing it,
10 would Ossur be open to an opportunity to look at
11 the Freedom business again today?

12 A. Well, given the fact that our due
13 diligence was kind of cut short, I think we would
14 be willing to initiate or reinitiate that part of
15 the process and re-evaluate to kind of answer the
16 unanswered questions and see whether in the whole
17 picture it's a good match.

18 (DeRoy Exhibit 13 was marked
19 as requested.)

20 BY MS. LAO:

21 Q. The court reporter just handed you a
22 document that's been marked as DeRoy Exhibit 13.
23 It begins with PX-03108-001 and ends in
24 PX-03108-092. It appears to be a cover letter with

1 pricing and unit attachment that is dated
2 December 4, 2017 and the cover letter is from
3 Amanda Reeves of Latham & Watkins to Linda Lao.
4 The subject reads "Acquisition of FIH Group
5 Holdings, LLC by Otto Bock Healthcare North America
6 Inc." Could you please take a moment and
7 familiarize yourself with the document.

8 (Witness reviewing document.)

9 BY THE WITNESS:

10 A. I think I get what's in here.

11 Q. We'll be focused on the SKU's that are
12 related to microprocessor knees in the bionic
13 section. I believe that those are on the pages
14 ending in dash 003 and dash 002. Have you reviewed
15 PX-03108?

16 A. PX you say, right?

17 Q. Have you reviewed the document?

18 A. Oh, the document, yes.

19 Q. Do you recognize it?

20 A. I do not.

21 Q. Can you describe what the contents are?

22 A. It looks like it is a sales overview for
23 every single SKU since 2014 through '17 along with
24 unit sales since 2014 through 2017.

1 Q. On the first page of Exhibit 13 the first
2 sentence of the letter states "Enclosed alongside
3 this e-mail please find documents and data
4 responsive to the civil investigative demand issued
5 to Ossur HF issued November 9, 2017; do you see
6 that line?

7 A. Sorry. Can you repeat that?

8 Q. Sure. On the first page of DeRoy
9 Exhibit 13 in the first line of letter it states
10 "Enclosed alongside this e-mail please find
11 documents and data responsive to the civil
12 investigative demand issued to Ossur HF issued
13 November 9, 2017."

14 A. I see that.

15 Q. Do you understand the spreadsheet that
16 follows this cover letter to be responsive to the
17 CID issued by the FTC to Ossur?

18 A. I don't think I understand what CID stands
19 for, to be honest with you. Is it just a general
20 data request?

21 Q. So the FTC had issued a data request to
22 Ossur in November of 2017.

23 A. Uh-huh. Yeah.

24 Q. And this letter explains that the contents

1 of the attachments are responsive to that data
2 request.

3 A. Okay. I understand.

4 Q. Does that make sense?

5 A. Yep.

6 Q. If you'll bear with me for just a moment,
7 we just wanted to confirm some of the numbers that
8 are included in this response on the record.

9 A. Uh-huh.

10 MR. McCONNELL: Can I just interject for a
11 second. I think it's unclear from Respondent's
12 position that's never seen the CID the scope of the
13 data request, whether it's submitted to the United
14 States, North America, globally. I don't know
15 where these numbers are coming from. I've never
16 seen the CID. As long as the witness understands
17 where the numbers are coming from or the scope. I
18 need more clarity to understand what this data is.

19 MS. LAO: Sure.

20 BY MS. LAO:

21 Q. The CID should have been provided in the
22 initial disclosures that we sent over to
23 Respondent. I don't have it in front of me today,
24 but as far as the spreadsheet itself goes, you

1 know, Mr. DeRoy, do you recognize these figures or
2 the SKU's that are included on pages 2 and 3 of the
3 exhibit?

4 MR. McCONNELL: Objection. Object to
5 form, lacks foundation.

6 BY THE WITNESS:

7 A. I recognize the SKU's. I'm a bit confused
8 about the numbers.

9 Q. Is it fair to say that if it was submitted
10 in response to the data request that was sent to
11 Ossur by the FTC that it should be a fair and
12 accurate representation of the figures that were
13 requested?

14 MR. McCONNELL: Objection to form, lacks
15 foundation.

16 BY THE WITNESS:

17 A. I don't know to which part of the data
18 request or document request this is the answer. It
19 doesn't mention which country I'm looking at or
20 which region I'm looking at. So I'm afraid the
21 document request was very broad and I'm not sure to
22 which exact part of it this part is referring.

23 Q. Okay.

24 MS. LAO: Let's go off the record.

1 (A short break was had.)

2 MS. LAO: I'd like to reserve 30 minutes
3 for follow-up questions after Mr. McConnell goes up
4 next. Thank you.

5 THE WITNESS: Let's take a quick break.

6 (A short break was had.)

7 FURTHER EXAMINATION

8 BY MR. McCONNELL:

9 Q. I understand the witness would like to
10 modify his testimony from earlier?

11 A. Correct.

12 Q. Mr. DeRoy, I believe I asked you earlier
13 what Ossur's total sales on a unit basis were for
14 the United States for microprocessor knees in 2017?

15 A. Yes.

16 Q. How many units did Ossur sell of
17 microprocessor knees in 2017?

18 [REDACTED]

19 Q. And is your testimony the same with
20 respect to mechanical knees sold on a unit basis in
21 2017, that it was significantly more than
22 microprocessor knees?

23 A. That's still correct, yes.

24 Q. Mr. DeRoy, a little bit ago you were

1 talking with Complainant counsel about your
2 estimation for how Otto Bock viewed the valuation
3 of Freedom Innovations, correct?

4 A. How Otto Bock viewed the valuation?

5 Q. Yeah. You testified that because the
6 Quatro had a hydraulic function more similar to the
7 C-Leg perhaps that was why Otto Bock ascribed a
8 larger value to Freedom Innovations than Ossur,
9 correct?

10 A. I would say that my testimony was that
11 because of the fact that the Quatro was a product
12 that would have more competitive impact on the Otto
13 Bock business it was therefore of more value to
14 Otto Bock to acquire that technology and not to
15 have it end up with their biggest competitor in the
16 microprocessor knee segment.

17 Q. Your testimony here today is that Otto
18 Bock's primary competitor with respect to
19 microprocessor knees is Freedom and not Ossur?

20 A. No. So my answer is that my testimony
21 earlier was that given the fact that the Plie
22 Quatro is a knee that is more of a direct
23 competitor to the C-Leg 4 that the acquisition of
24 Freedom would be of a higher value to Otto Bock to

1 prevent that knee that was a direct competitor to
2 their C-Leg to end up with their largest competitor
3 in the microprocessor segment being Ossur.

4 Q. Understood. Thank you.

5 Are there any other reasons that Ossur
6 thought that Otto Bock may ascribe more value to
7 Freedom Innovations than Ossur did in 2017?

8 A. I believe it's fair to say that the foot
9 range -- and I made the comment in the previous
10 testimony as well, I guess that was your next
11 question -- the foot range that Otto Bock has is
12 less expansive than ours is. So in that
13 perspective the extensive foot portfolio that they
14 acquired from Freedom would complete their
15 portfolio and would have an added value for them.

16 Q. And in addition I believe your testimony
17 with respect to Otto Bock's feet was in addition to
18 not being as expansive as Ossur they weren't as
19 good quality as Ossur's feet, correct?

20 A. Quality wise I wouldn't express myself
21 about that, but from a functional perspective I
22 would say our products are functionally superior.

23 Q. So Otto Bock's ability to acquire feet
24 products that were more closely competitive with

1 Ossur's feet products would have been valuable to
2 Otto Bock, correct?

3 A. They would have acquired a foot range that
4 is more competitive and has a higher market share
5 and therefore would be more valuable to them,
6 correct.

7 Q. You testified in response to some
8 questions from Complainant counsel about Ossur's
9 Symbionic product and its struggles, correct?

10 A. I referred to the Symbionic product and
11 the fact that there was limited sales on that
12 product given the fact that the ankle in specific
13 has been considered experimental by quite a few
14 payer sources and therefore takes a lot more time
15 for a prosthetist to get it reimbursed and that's
16 where we've seen that people are more likely to
17 choose a microprocessor knees with a mechanical
18 ankle that gets reimbursed easier.

19 Q. I believe you testified that in the near
20 future when the Proprio is reimbursed by more
21 payers that the Symbionic could be a growth product
22 for Ossur, correct?

23 A. We believe that gradually, as it happened
24 for the microprocessor knees, there will be more

1 adoption and more acceptance. We've actually seen
2 it that certain payers, workers' comp payers have
3 put the Proprio Foot -- taken it off experimental
4 and considered it to be a viable solution. So we
5 expect that to be the trend and that gradually that
6 type of technology will allow for growth in the
7 future.

8 Q. With the Symbionic product is the Proprio
9 able to communicate with the Rheo Knee?

10 A. They only share a battery.

11 Q. So how is the Symbionic product different
12 from an amputee that has just a Proprio knee and a
13 Rheo -- excuse me -- a Proprio ankle and a Rheo
14 knee?

15 A. Essentially the difference lies within the
16 mechanics. The fact that the Proprio Foot comes
17 with an external battery which has been considered
18 cumbersome to hide within a prosthesis, so the fact
19 they share the same battery makes the unit more
20 compact, more anatomically finishable, and
21 therefore more desirable for the patients. So the
22 two units act independently, but because of their
23 sensor technology and their intelligence the knee
24 does know what the foot's doing and vice versa.

1 Q. And am I correct that Endolite has a
2 similar product on the market called the Linx?

3 A. So they have a microprocessor ankle and a
4 microprocessor knee combination. However, they're
5 based on a totally different technology platform
6 than the Symbionic leg with a Proprio and Rheo
7 knee.

8 Q. Outside of the technology from a
9 functional standpoint, is the Linx similar to the
10 Symbionic in that it's a prosthetic device with a
11 microprocessor ankle combined with a microprocessor
12 knee?

13 A. Well, you just referred to the technology.
14 So function wise they're very different. So if
15 you're asking about the functionality, the
16 hydraulic ankle used by Endolite is one that adapts
17 to the terrain it's on under -- while the patient
18 is standing on the foot. Whereas the Symbionic leg
19 with a Proprio, the foot is stable while the
20 patient is standing on it and any adjustment is
21 happening while the foot is in swing phase. So
22 different technology, but also different principles
23 to adjusting to different terrain. So you could
24 say that the Symbionic leg -- or let's say the

1 Proprio is more indicated for patients that would
2 appreciate a more dynamic walk versus the Elan
3 ankle which they use as part of the Linx
4 combination is more desirable for patients that
5 walk more slowly and that want a more immediate
6 type of adjustment. So same principle, very
7 different user group.

8 Q. Does Otto Bock have a similar product that
9 it sells in the United States to the Symbionic or
10 the Linx?

11 A. They do have the ankle and they do have
12 the microprocessor knee as we know. So they have a
13 microprocessor knee and microprocessor ankle. How
14 successful they currently are at combining those
15 and bringing those to market I have limited
16 information. They have the Triton Smart as the
17 microprocessor-controlled ankle and then the C-Leg
18 or the Genium as the knees. So theoretically they
19 can match those together. How often that's done in
20 the United States I can't tell.

21 Q. If demand for microprocessor knees
22 increased in the United States would Ossur have
23 capacity to produce 700 additional microprocessor
24 knees in a year in the United States market?

1 A. I don't see why we wouldn't be able to do
2 that. It would require some investment, it would
3 require expansion of manufacturing, but we should
4 be able to do that.

5 Q. We've talked a little bit today about list
6 prices and I believe your testimony has been that
7 the list price for the Rheo is 19,500, correct?

8 A. Right around there. I saw there was some
9 inconsistency in the different documents, 19,400,
10 19,300, but it's around the 19,500 price range,
11 yes.

12 Q. And I believe you testified that the
13 average selling price with discounts for the Rheo
14 Knee is around 16,500, correct?

15 A. That is correct.

16 Q. In your experience in the industry over
17 the last decade or so how have those prices for the
18 Rheo changed?

19 A. The list price has increased somewhat,
20 albeit limited. We've had years that the price
21 increased by 2 percent in line with Medicare
22 adjustments as well. I would say that on the
23 average sales price that we've actually seen an
24 increase in average sales price in the last few

1 years, but that's through the introduction of the
2 higher priced Rheo Knee XC. When you look at the
3 isolated Rheo Knee we have seen that the increase
4 in volume has resulted in a slight decrease of the
5 average sales price.

6 Q. So limiting your testimony to just the
7 Rheo Knee over, say, the last decade, has the
8 average sales price gone down?

9 A. The average sales price of just the Rheo
10 Knee has gone down based on the increase in volume
11 and volume commitment of some of our customers.

12 Q. Is the average sales price for the Rheo
13 going down over the last ten years in the United
14 States related to consolidation in the O&P clinic
15 space?

16 A. I think it's fair to say that the
17 consolidation has resulted in smaller facilities
18 that would pay a higher price within larger
19 facilities that had a lower purchasing price, that
20 that has affected the average sales price somewhat,
21 yes.

22 Q. You testified earlier that you were not
23 aware of any commercially available microprocessor
24 knees outside of the U.S., correct?

1 A. Any additional ones to the ones that we've
2 been talking about, that's correct.

3 Q. Are you familiar with a microprocessor
4 knee called the SuKnee?

5 A. I am not familiar with that name.

6 Q. Are you familiar with any other types of
7 microprocessor knees that are in development
8 outside of the U.S.?

9 A. Not to my knowledge, no.

10 Q. You testified that in around 2000 when
11 Ossur acquired Flex-Foot that Ossur was primarily a
12 liner company, correct?

13 A. That is correct.

14 Q. And Ossur's acquisition of Flex-Foot
15 allowed it to broaden its prosthetic foot portfolio
16 and gave Ossur R&D that allowed it to conveniently
17 enter the microprocessor knee segment, correct?

18 A. With the acquisition of Flex-Foot we added
19 the feet to our range of liners and limited amount
20 of knees at the time already and we acquired the
21 prototype and licensing to the Rheo Knee
22 development project at the time.

23 Q. Before the acquisition of the Flex-Foot
24 company in 2000 about how many foot -- prosthetic

1 foot products did Ossur sell in the United States?

2 A. Well, there was one foot in our portfolio
3 at the time. I wouldn't even be able to tell you
4 how many units we sold of that one foot, if we sold
5 any for that matter.

6 Q. And around 2000 before you -- before Ossur
7 purchased Flex-Foot how many sales reps did Ossur
8 have in the United States?

9 A. I couldn't speak to that. I don't know
10 exactly at what time we shifted from distribution
11 over to direct sales. I think to the best of my
12 knowledge that happened at the time -- around the
13 time of the acquisition of Flex-Foot.

14 Q. So at some point at or around the time of
15 the acquisition of Flex-Foot Ossur had sold its
16 products -- prosthetic products in the United
17 States via distribution only; is that right?

18 A. I can't confirm with a hundred percent
19 certainty. I know that we did direct sales
20 directly from the European locations, but I do
21 believe that there was -- there was a distribution
22 partner at the time, yes.

23 MR. McCONNELL: I have no further
24 questions. Thank you.

1 MS. SULLIVAN: Do you need a break or do
2 you want to get started right away?

3 MS. LAO: Can you give us like five.

4 MS. SULLIVAN: Yeah. Let's take five.

5 (A short break was had.)

6 FURTHER EXAMINATION

7 BY MS. LAO:

8 Q. Mr. DeRoy, you testified earlier about the
9 approximate number of units sold of microprocessor
10 knees by Ossur in 2017. Do you have an estimate of
11 the total U.S. sales in 2017 for microprocessor
12 knees for Ossur in revenue?

13

14

15 Q. Do you have an estimate for 2018 year-to-
16 date number of unit sales for microprocessor knees
17 in the United States?

18 A. No accurate estimate.

19 Q. What about in terms of revenue for the
20 United States 2018 year-to-date?

21 A. Slight increase over comparable period of
22 last year, but I don't have the exact number.

23 Q. Earlier you testified about Otto Bock's
24 foot offering when you were speaking with

1 Respondent's counsel. Even though Ossur views Otto
2 Bock's foot offering as not as good as Ossur's,
3 does Otto Bock offer a competitive range of feet
4 today?

5 A. I would say it's competitive. I'm sure
6 people have the option between Ossur Flex-Foot,
7 Otto Bock feet, College Park, and all the others.
8 They're one of the feet that people could choose
9 from.

10 Q. And as you had discussed with me earlier
11 today, there are a number of additional competitors
12 within the foot -- prosthetic foot market over the
13 microprocessor knee market, correct?

14 A. There's quite a few more, yes. There's
15 about 400 -- there's over 400 different prosthetic
16 feet just in the K3 segment to pick from. So it's
17 massive.

18 Q. You also testified earlier about how Ossur
19 entered the bionic knee market after it acquired
20 Flex-Foot. How many years did it take for Ossur to
21 eventually launch the bionic knee after it acquired
22 it from Flex-Foot?

23 A. It was in the range of four to five years.

24 Q. What work did Ossur do with the bionic

1 knee before launching it?

2 A. I think I'd best describe that in the
3 different subcomponents of the device. So there's
4 the electronics part, there's the software/firmware
5 part, and then there's the hardware part. There
6 was work to be done on all three of them. I think
7 that the biggest part of it was trying to maximize
8 the output of the mechanical parts, that is, the
9 actuator, the braking mechanism, the MR mechanism,
10 and to utilize the firmware, the software that
11 steers the knee to the best of our abilities to
12 match exactly when the patient needs resistance
13 we're giving resistance, when they need it to be
14 freely swinging we give it free swing. So that
15 fine-tuning definitely took its time. And then to
16 be able to combine all three, software/firmware,
17 electronics, and hardware and mechanics basically
18 into one unit that was of acceptable size, weight,
19 and dimensions.

20 Q. In addition to the engineering, what else
21 did Ossur do in order to prepare for the launch of
22 the bionic knee after it acquired Flex-Foot?

23 A. There were a lot of efforts with
24 relationship to go-to-market strategy execution.

1 If I remember correctly, this was one of our
2 highlights of the 2004 show, rehabilitation show in
3 Germany, and that's where it started. It was up
4 front and center, it was the most talked about,
5 most advertised, and that's something that went on
6 for years to establish that brand awareness to try
7 to become a respected number two against a product
8 that had at least five years of advantage and that
9 had just good recognition already at the time.

10 Q. Since Ossur's acquisition of Flex-Foot in
11 around 2000 would you say that, given the market
12 conditions today, it is easier or more difficult to
13 market a bionic knee in the U.S. as a new entrant?

14 A. It was definitely not easy when we did it
15 back in the day. I think times have changed quite
16 considerably. I would say the barrier is high. Is
17 it as high as it was back then? It's tough to say.
18 I think technology has advanced quite a bit so that
19 from a technology perspective possibly you would be
20 able to take some shortcuts.

21 From a perspective of gaining market
22 recognition, gaining the brand awareness and such
23 we have an unwritten rule or an agreement that
24 basically states that your development cost, you're

1 paying that again in go-to-market and launching the
2 product and marketing the product. So it's -- it's
3 a costly and time-consuming process to do it
4 successfully.

5 The fact that the reimbursement is more
6 open and receptive to it now could be somewhat
7 helping. Microprocessor knees were just not
8 accepted back in 2003 and '4. Definitely that type
9 of technology is more accepted at the moment. So
10 that will help, but still, you're up against some
11 established brands and some established products.
12 So it's going to be challenging.

13 MS. LAO: Let's go off the record. Thanks
14 so much. Appreciate your time. Let's close out
15 the record for the day.

16 (Whereupon, at 4:10 p.m. the
17 taking of the instant
18 deposition ceased.)
19
20
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24

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, TINA M. ALFARO, Registered Professional
3 Reporter, Certified Realtime Reporter, and Notary
4 Public in and for the District of Columbia, the
5 officer before whom the foregoing deposition was
6 taken, do hereby certify that KIM PETER VIVIAN
7 DEROY, whose deposition is hereinbefore set forth,
8 was duly sworn by me and that said deposition is a
9 true record of the testimony given by such witness,
10 and that reading and signing was not requested.

11 I further certify that I am not counsel
12 for nor in any way related to any of the parties to
13 this suit, nor am I in any way interested in the
14 outcome thereof.

15 In witness, whereof, I have hereunto set
16 my hand and affixed my notarial seal this 27th day
17 of March, 2018.

18 My Commission expires October 31, 2020.

19 

20 _____
21 NOTARY PUBLIC IN AND FOR THE
22 DISTRICT OF COLUMBIA
23
24

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT D

**Withheld from
Public Version**

Notice of Electronic Service

I hereby certify that on June 11, 2018, I filed an electronic copy of the foregoing Non-Party Ossur Americas, Inc.'s Motion for In Camera Treatment, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
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I hereby certify that on June 11, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Ossur Americas, Inc.'s Motion for In Camera Treatment, upon:

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