UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CORE-VENT CORPORATION
a Nevada corporation,

Plaintiff

CV 90-3084 WDK (SHx)
CV 93-3282 WDK (SHx)

DECLARATION OF GERALD A. NIZNICK IN OPPOSITION TO DEFENDANT PETER MOY'S MOTION FOR SUMMARY JUDGMENT

Date: September 30, 1996
Time: 3:00 p.m.
Ctrm: Hon. William D. Keller

v.
NOBEL INDUSTRIES SWEDEN AB et al., a Swedish corporation; JOHN BEUMER, an individual; and STEVEN LEWIS, an individual,

Defendants.
_____

1.

I am president and principal shareholder of plaintiff Core-Vent Corporation, on whose

UNITED STATES DISTRICT COURT
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CORE-VENT CORPORATION a Nevada corporation, Plaintiff v. NOBEL INDUSTRIES SWEDEN AB et al., a Swedish corporation; JOHN BEUMER, an individual; and STEVEN LEWIS, an individual, Defendants. _____	CV 90-3084 WDK (SHx) CV 93-3282 WDK (SHx) DECLARATION OF GERALD A. NIZNICK IN OPPOSITION TO DEFENDANT PETER MOY'S MOTION FOR SUMMARY JUDGMENT Date: September 30, 1996 Time: 3:00 p.m. Ctrm: Hon. William D. Keller

I, GERALD A. NIZNICK, hereby declare that:

1 I am president and principal shareholder of plaintiff Core-Vent Corporation, on whose behalf I make this declaration. I have personal knowledge of the facts set forth herein and, if called to testify, I could and would testify competently thereto, except where noted otherwise.

2 I have read the declaration of defendant Dr. Peter K. Moy (the “Moy declaration”), dated January 4, 1996 and filed in support of his motion for summary judgment. I file this declaration to explain and to show why Dr. Moy’s January 4, 1996 declaration.

3 The Moy declaration relates, in part, to Dr. Moy’s May, 1987 study (the “Moy study”) that Dr. Moy presented to an audience in Palm Springs, California, entitled “Comparative Analysis of 100 Consecutively Placed Core-Vent Implants To 100 consecutively-Placed Biotes (Branemark) Implants”, naming Dr. John Beumer and Dr. Steven Lewis of UCLA’s dental school as his co-authors.

The Moy study included data allegedly showing Dr. Moy’s success rates with 100 Core-Vent dental implants that Dr. Moy placed consecutively in patients, as compared to his alleged success rates with 101 consecutively-placed Nobelpharma dental implants (sometimes called “Biotes” or “Branemark” dental implants). I attended this May 1987 symposium and personally heard Dr. Moy’s presentation. During the question-and-answer session which immediately followed his presentation, I questioned Dr. Moy about his findings, and disputed the results he presented. However, at that time I had not seen Dr. Moy’s patient charts and x-rays. Therefore, I did not know the extent to which Dr. Moy had falsified his actual results to overstate his actual success rates with Nobelpharma implants, and to understate his actual success rates with Core-Vent implants.

4 I have now reviewed Dr. Moy’s patient charts and x-rays for the dental implant patients

who were included in this case. In my opinion, the Moy study overstated Dr. Moy's actual success rates with Nobelpharma implants understated his actual success rates with Core-Vent implants, as explained below. If the Moy study had accurately stated Dr. Moy's actual success rates, Nobelpharma would likely not have re- published and circulated the false Moy study, as Nobelpharma did and continues to do, to Core-Vent's great damage. Unfortunately, since the May, 1987 symposium, defendant Nobelpharma, with Dr. Moy's permission, has re-published Dr. Moy's presentation all over the worked, to Core-Vent's great damage.

5 On several occasions, I have asked Drs. Moy, Lewis and Beumer to publish a correction of Dr. Moy's study and to ask Nobelpharma to stop circulating the false Moy study which Nobelpharma has used so effectively to damage Core-Vent's standing in the dental community. Through Core-Vent Corporation, I have offered to fund the necessary corrective studies. Drs. Moy, Beumer and Lewis have refused my offers. To my knowledge, at not time have Drs. Moy, Beumer or Lewis asked Nobelpharma to stop circulating the false Moy study, to correct the errors in the Moy study, or to otherwise mitigate the harm caused, and continuing to be caused, by the circulation and re-publication of the false Moy study.

6 Attached as EXHIBIT 1 hereto are copies of Moy Deposition Exhibits 700A and 700B.

Dr. Moy testified that he prepared these exhibits in the last quarter of 1995 in an effort to re-create the data he allegedly compiled in 1987 for the Moy study, presented at the Palm Springs symposium, and then “lost.” Dr. Moy testified that he prepared Exhibits 700A and 700B, based on the originals of Dr. Moy’s patient charts and x-rays for the dental implant patients included in the Moy study. Dr. Moy has testified that he and Dr. Lewis jointly reviewed these same charts and x-rays in the April, 1987 time frame, and that Dr. Moy contemporaneously prepared a written summary of his results. But Dr. Moy testified that he cannot (or will not) produce this summary. Thus, there are no contemporaneous written records of the work, if any, that Dr. Moy and Dr. Lewis allegedly did to write the Moy study.

7 The Moy study, and Nobelpharma’s re-publication of the data from that study (see EXHIBIT 2 hereto, for example) included two categories of failures: (a) actual failures, and (b) projected failures. Dr. Moy admitted that his criteria for projected failures were not taken from or based upon comparative studies of dental implants by others. Instead he alone selected the criteria he used in the false Moy study. Dr. Moy admitted that he has no written records to show that he ever applied these criteria to the implant s in his study, let alone how he applied them.

8 Though the Moy study allegedly includes the first 101 Branemark implant s that Dr. Moy

consecutively placed in patients, and the first 100 Core-Vent implants Dr. Moy consecutively placed in patients, Dr. Moy now admits he omitted more than 15 of the first 100 Nobelpharma implants he had consecutively placed. At least 11 of these 15 omitted implant s had failed. Dr. Moy knew of his omission before his May, 1987 presentation, but omitted this fact from the Moy study. Nobelpharma has repeatedly re-published the false Moy study as if it were a study of consecutively-placed Nobelpharma and Core-Vent implants, when, in fact, both Nobelpharma and Dr. Moy know of Dr. Moy's omissions. In my opinion, if Nobelpharma had published this fact as widely as it published Dr. Moy's false data, the Moy study would likely have done far less harm to Core-Vent Corporation.

9 Though Dr. Moy asserts otherwise in his January 4, 1996 declaration, in my opinion,

he and his co-authors intentionally overstated his success with Nobelpharma implants and understated his success with Core-Vent implants, as explained below, in part to persuade Nobelpharma to fund a $700,000 Nobelpharma research institute at UCLA's dental school where Dr. Moy was a visiting professor and Drs. Beumer and Lewis were fill-time faculty members. See

Exhibit ____.

10 Based upon Dr. Moy's testimony, and upon my review of his charts and x-rays for

patients who received Nobelpharma implants from Dr. Moy, as shown in Exhibit 700A, I have made the following observations:

Dr. Moy omitted from his first 100 "consecutively placed" Nobelpharma implants

the 15 implants he placed in patient numbers 8, 27 and 30. On Exhibit 700A, the extreme left-hand column lists his Nobelpharma patients by number. neither patient 8 nor patient 27 nor patient 30 is listed there. At paragraph 24 of his January 4, 1996 declaration, Dr. Moy admits he intentionally omitted two of these Nobelpharma implant patients, and their nine failed Nobelpharma implants, from his study. At paragraph 25 of that declaration, Dr. Moy asserts that he inadvertently omitted the 6 Nobelpharma implants he placed in patient 30.

Patient 27 received five Nobelpharma implants form Dr. Moy in the upper, or maxillary, jaw. All five failed by May, 1987. Patient 8 received four Nobelpharma implants in the upper, or maxillary, jaw. Three failed by May, 1987, and the fourth was a projected failure under Dr. Moy's criteria.

Dr. Moy has admitted that he intentionally omitted these nine failed Nobelpharma implants form his study, and admits he did not tell his audience that he had done so. He later permitted Nobelpharma to re-publish his data without correction of these omissions. Dr. Moy also admitted that the reasons set forth in his January 4, 1996 declaration for omitting these implants and for concealing these omissions were unprecedented in any other published study of this kind. See

Moy Depo Trans., pp.

_____.

11 Exhibit 700A shows Dr. Moy included 26 Nobelpharma implants placed in the upper, or

maxillary, jaw. See column 4 of Exhibit 700A. In fact, the first 100 Nobelpharma implants he placed, counting the 15 omitted implants, included 41 Nobelpharma implants in the upper jaw. In addition to he two failures with such upper jaw implants shown in column 5 on Exhibit 700A, the 15 omitted implants included 11 failures. Therefore, Dr. Moy's actual success rate was no better than 28 success out of 41 implants placed, or a success percentage of no more than 68.2%. Dr. Moy admitted that his study included two projected failures of Nobelpharma implants in the upper jaw. If these failures are included in Dr. Moy's results, his success rate falls from 68.2% to 63.4%. If Dr. Moy had reported these actual success rates in May, 1987, Nobelpharma would likely not have re-published and circulated Dr. Moy's results. Nobelpharma would hardly have wanted anyone to see

Dr. Moy's poor upper jaw results with Nobelpharma implants.

12 Dr. Moy's reported results with mandibular, or lower jaw, placements of Nobelpharma implants are also overstated in his study. Exhibit 700A reports only one failure amount the 75 Nobelpharma implants he place in the lower jaw. In fact, there were at least 6 additional, unreported failures, meaning at least 7 out of 75 failed.

Regarding patient #9/11 on Exhibit 700A, Dr. Moy admitted he placed six Nobelpharma implants in the lower jaw, and that, in May 1987, just before his presentation in Palm Springs, at the patient's request, he removed the bridge connected to those implants because the patient had suffered from numbness (paresthesia) and jaw pain for nearly a year, and Dr. Moy had failed to solve these problems. By any reasonable, objective criteria, these implants were failures. Yet Dr. Moy reported these six implants as successful in his study. See Moy Depo Trans., pp. 1554-1565; 1569-

1574.

During his deposition, Dr. Moy admitted that he had no memory or written record of when he adopted his criteria for projected failures, and no written records to show he applied these criteria to all Nobelpharma implants in his study, as explained below.

For example, for patient #1 on Exhibit 700A, Dr. Moy had no written record of ever applying these criteria for projected failure to these Nobelpharma implants at any time. He admitted that his chart showed he last saw this patient in February, 1986 -- long before he adopted his projected failure criteria. See Moy Depo Trans., pp. 1501-1511.

Regarding patient #3 on Exhibit 700A, Dr. Moy admitted he had no written record of applying his projected failure criteria to this Nobelpharma implant. See Moy Depo Trans., pp. 1511-1517.

Regarding patient #4 on Exhibit 700A, Dr. Moy admitted he had no written record of applying his projected failure criteria to these Nobelpharma implants, and admitted he had no written record of seeing this patient at any time after November, 1985 -- long before he adopted his criteria for projected failure. See Moy Depo Trans. pp. 1517-1526.

Regarding patient #5 on Exhibit 700A, Dr. Moy admitted that his chart showed he had last seen this patient in October, 1985 -- long before he adopted his criteria for projected failure. Again, he had no written record of applying his projected failure criteria to these Nobelpharma implants. See Moy Depo Trans. pp. 1526-1535.

Regarding patient #6 on Exhibit 700A, Dr. Moy admitted that his chart shows that he

last saw this patient in March, 1986 -- long before he adopted his criteria for projected failure. he admitted he had no written record of applying his criteria to these implants. He admitted that this patient had received a third Nobelpharma implant before May, 1987. This third implant failed, but he excluded it from the Moy study, though it was one of the first 100 Nobelpharma implants he placed. he also admitted that he made an unreported surgical error on this patient. See Moy Depo Trans., pp. 1535-1549.

Regarding patient #7 on Exhibit 700A, Dr. Moy admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. He admitted that his chart showed that he last saw the patient in October, 1985 -- long before he adopted his criteria for projected failures. See Moy Depo Trans., pp. 1550-1569.

Regarding patient #12 on Exhibit 700A, Dr. Moy admitted he placed three Nobelpharma implants in this patient before May, 1987, and removed one such implant, but omitted it from his study. He also admitted that he had no written record of applying his projected failure criteria to these implants. See Moy Trans., pp.1574-1580; 1588-1591.

Regarding patient #13 on Exhibit 700A, Dr. Moy admitted he had no written record of applying his projected failure criteria to these Nobelpharma implant, even though his chart showed he saw this patient in February, 1987. See Moy Depo Trans., pp.1600-1614; 1620-1625.

Regarding patient #14 on Exhibit 700A, Dr. Malloy admitted he had no written record of applying his projected failure criteria, even though his chart showed he saw the patient in April, 1987, just before his May, 1987 presentation in Palm Springs. See Moy Depot Trans., pp. 1614-1620

Regarding patient #15 on Exhibit 700A, Dr. Moy admitted that, his chart showed he last

saw this patient in December, 1985, before he adopted his criteria for projected failures to these implants, either. He had no written record of applying these criteria to this patient's Nobelpharma implants at any time.

See Moy Depo Trans., pp. 1641-1644.

Regarding patient #18 on Exhibit 700A, Dr. Moy admitted his chart showed he saw this patient in April, 1986 -- long before he adopted his criteria for projected failures. He admitted he had not written record of applying these criteria to this patient's Nobelpharma implants at any time. See Moy Depo Trans., pp. 1641-1644.

Regarding patient #19 on Exhibit 700A, Dr. Moy admitted his chart showed he last saw this patient on May 11, 1987 -- just before his presentation at Palm Springs -- but had no writ ten record of applying his projected failure criteria to this Nobelpharma implant. See Moy Depo Trans., pp. 1644-1647.

Regarding patient #21 on Exhibit 700A, Dr. Moy admitted he had no written record of applying his projected failure criteria to these Nobelpharma implants, and that his chart showed he last saw this patient in December, 1986 -- before he adopted his projected failure criteria. See Moy Depo Trans., pp. 1649-1650.

Regarding patient #23 on exhibit 700A, Dr. Moy admitted his chart showed he last saw this patient in May, 1986 -- long before he adopted his projected failure criteria -- and admitted he had no written record of applying these criteria to these Nobelpharma implant. In addition, before May, 1987, he placed an additional Nobelpharma implant in this patient, but, but he omitted this implant from his study. See Depo Trans., pp. 1650-1652.

Regarding patient #25 on exhibit 700A, Dr. Moy's chart showed he last saw this patient

in February, 1987. Dr. Moy admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. Dr. Moy's chart showed he last saw this patient in February, 1987. Dr. Moy admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. Dr. Moy stated this patient had some infection at the implant site in February, 1987, but he did not list the implant as a projected failure, as his criteria appears to have required him to do. See Moy Depo Trans., pp. 1654-1659.

Regarding patient #26 on Exhibit 700A, Dr. Moy admitted he had no written record of

applying his projected failure criteria. to this patient's Nobelpharma implants. See Moy Depo Trans., pp. 1661-1664.

Regarding patient #29 on Exhibit 700A, Dr. Moy admitted his chart showed he last

saw this patient in February, 1986 -- before he adopted his projected failure criteria. He also admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. See moy Depo Trans., pp. 1664-1665.

Regarding patient #21 on Exhibit 700A, Dr. Moy admitted he had no written record of

applying his projected failure criteria to these Nobelpharma implants, and that his chart showed he last saw this patient in December, 1986 -- before he adopted his projected failure criteria. See Moy Depo Trans., pp. 1649-1650.

Regarding patient #23 on exhibit 700A, Dr. Moy admitted his chart showed he last saw

this patient in May, 1986 -- long before he adopted his projected failure criteria -- and admitted he had no written record of applying these criteria to these Nobelpharma implant. In addition, before May, 1987, he placed an additional Nobelpharma implant in this patient, but, but he omitted this implant from his study. See Depo Trans., pp. 1650-1652.

Regarding patient #25 on exhibit 700A, Dr. Moy's chart showed he last saw this patient

in February, 1987. Dr. Moy admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. Dr. Moy's chart showed he last saw this patient in February, 1987. Dr. Moy admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. Dr. Moy stated this patient had some infection at the implant site in February, 1987, but he did not list the implant as a projected failure, as his criteria appears to have required him to do. See Moy Depo Trans., pp. 1654-1659.

Regarding patient #26 on Exhibit 700A, Dr. Moy admitted he had no written record of

applying his projected failure criteria. to this patient's Nobelpharma implants. See Moy Depo Trans., pp. 1661-1664.

Regarding patient #29 on Exhibit 700A, Dr. Moy admitted his chart showed he last

saw this patient in February, 1986 -- before he adopted his projected failure criteria. He also admitted he had no written record of applying his projected failure criteria to this patient's Nobelpharma implants. See moy Depo Trans., pp. 1664-1665.

14 Regarding the Core-Vent implants in the Moy study, Dr. Moy understated the success

rate he achieved with these implants.

For example, with Core-Vent patient #33 on Exhibit 700B, Dr. moy's chart shows that

on February 20, 1987 -- the last time he saw the patient before his study was published -- he wrote that there was no mobility with these implants. Yet, he treated one as a projected failure. He had no written record showing that he applied his projected failure criteria to this patient. His chart also shows that this patient suffered persistent paresthesia, indicating surgical error in placement of the implants. Dr. Moy

refused to concede his error, but admitted he did not report the paresthesia in the Moy study. See Moy

Depo Trans., pp. 1666-1675.

	Regarding Core-Vent patient #35 on Exhibit 700B, Dr. Moy admitted he had no written
record to support his projection of failure for these implants. He admitted that he had not seen this patient after he adopted his projected failure criteria. Exhibit 700B omits any mention that Dr. Moy followed this patient after September, 1985. See Moy Depot Trans., pp. 676-1688.	
	Regarding the unnumbered Core-Vent patient in Exhibit 700B with the initials “S.C.”,
Dr. Moy’s chart showed that one of the two Core-Vent implants he placed should have been excluded from his study because it was never loaded with a prosthesis, and the other should have been counted as a success. Instead, Dr. Moy excluded the one implant and treated the other as a projected failure. See Moy Depo Trans., pp. 1691-1705.	
	Regarding Core-Vent patient #30 on Exhibit 700B, Dr. Moy admitted he treated five of
these 9 implants as projected failures, though all were still in the patient’s mouth in 1990. See Moy Depo Trans., pp. 1706-1730.	
	Regarding Core-Vent patient #56 on Exhibit 700B, Dr. Moy admitted he placed only 8
implants in this patient, no 12 as Exhibit 700B states. Dr. Moy treated the 4 implants that he never placed as failures. See Moy Depo Trans., pp. 1730-1735.	
	Regarding Core-Vent patient #32 on Exhibit 700B, Dr. moy’s chart showed that one
implant he projected as a failure had less than +3 millimeters of mobility, and thus should have been treated as a success. See Moy Depo Trans., pp. 1735-1749.	
	Regarding Core-Vent patient #40 on Exhibit 700B, Dr. Moy admitted his chart showed
that the patient had been experiencing persistent paresthesia and that he placed one implant in the mandibular canal -- a surgical error. Dr. Moy admitted he did not report his errors in his study. See Moy Depo Trans., pp. 1749-1754.	

Regarding Core-Vent patient #50 on Exhibit 700B, Dr. Moy projected these two implants as failures, but his chart showed that someone had left cement on these implants -- a treatment error. He also admitted that he first noticed some infection around the implants in February, 1987. Thus, he admitted he could not properly call this infection chronic. Yet, he called the infection chronic, and projected these implants as failures. See Moy Depo Trans., pp. 1760-1765.

Regarding Core-Vent patient #52 on Exhibit 700B, Dr. Moy admitted that, though he had treated two of the implants as projected failures, his chart showed that, as of February, 1987 -- the last time he saw this patient before the Moy study -- the implants were solid and the infection as gone. See Moy Depo Trans., pp. 1765 et seq.

15 In sim, Dr. Moy admitted that the 100 Core-Vent implants in his study included four implants he had never placed yet treated as failures. Based on actual failures, his success rate in the upper jaw was 90%, and 89% in the lower jaw. Dr. Moy used his undocumented, unrecorded “projected failures” to understate his success with Core-Vent implants. At least 16 of his 21 projected failures should have been reported as successes. The other five projected failures appear to be undocumented in Dr. Moy’s charts and x-rays. His total failures, both actual and projected, should have been no more than 10 out of 96, i.e. his overall success rate was at least 89.6%, not 58% or 68%, as Nobelpharma widely and falsely published with Dr. Moy’s permission (see EXHIBIT 2 hereto).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Gerald A. Niznick