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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court of Common Pleas,
Thirteenth Judicial Circuit
The Hon. Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-04092 / Case No. 2022-CP-23-01310
Ct. App. Case No. 2025-001630

Sealevel Systems, Inc.Appellant,

v.

CreatiVasc Medical, Inc., DiaxaMed, LLC,
successor in interest to Brookhaven Vascular, Inc.,
successor in interest to Brookhaven Merger Corp.,
successor in interest to CreatiVasc Medical, Inc.,.....Respondents.

**RECORD ON APPEAL
VOLUME III
(pp. 708 - 1094)**

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EXHIBIT 1





US 20040249334A1

(19) **United States**(12) **Patent Application Publication** (10) **Pub. No.: US 2004/0249334 A1**

Cull

(43) **Pub. Date:****Dec. 9, 2004**(54) **ARTERIOVENOUS ACCESS VALVE SYSTEM
AND PROCESS**

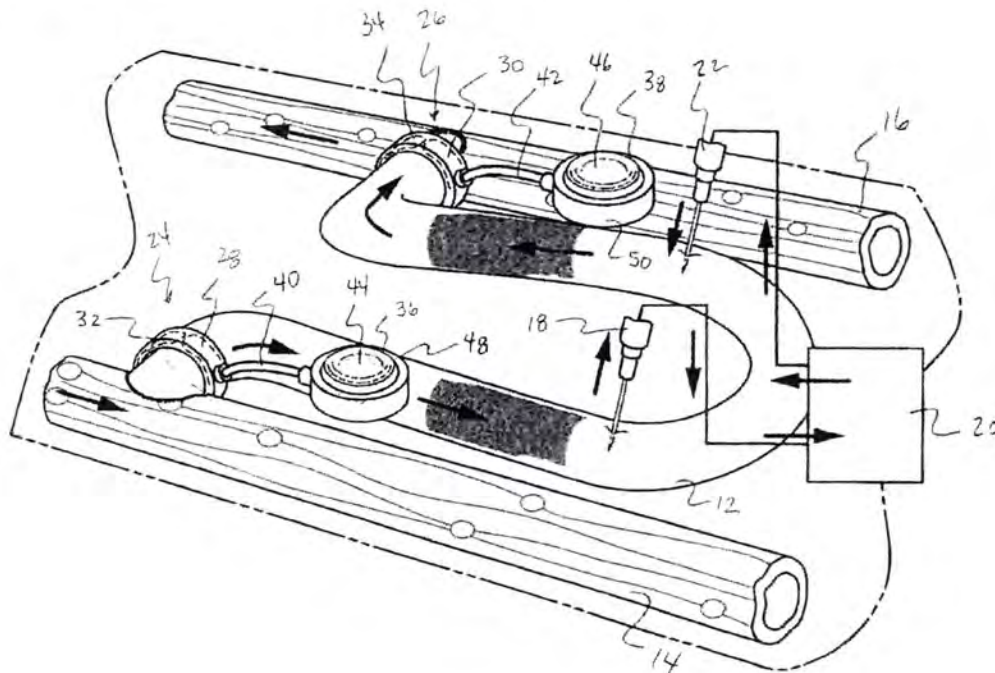
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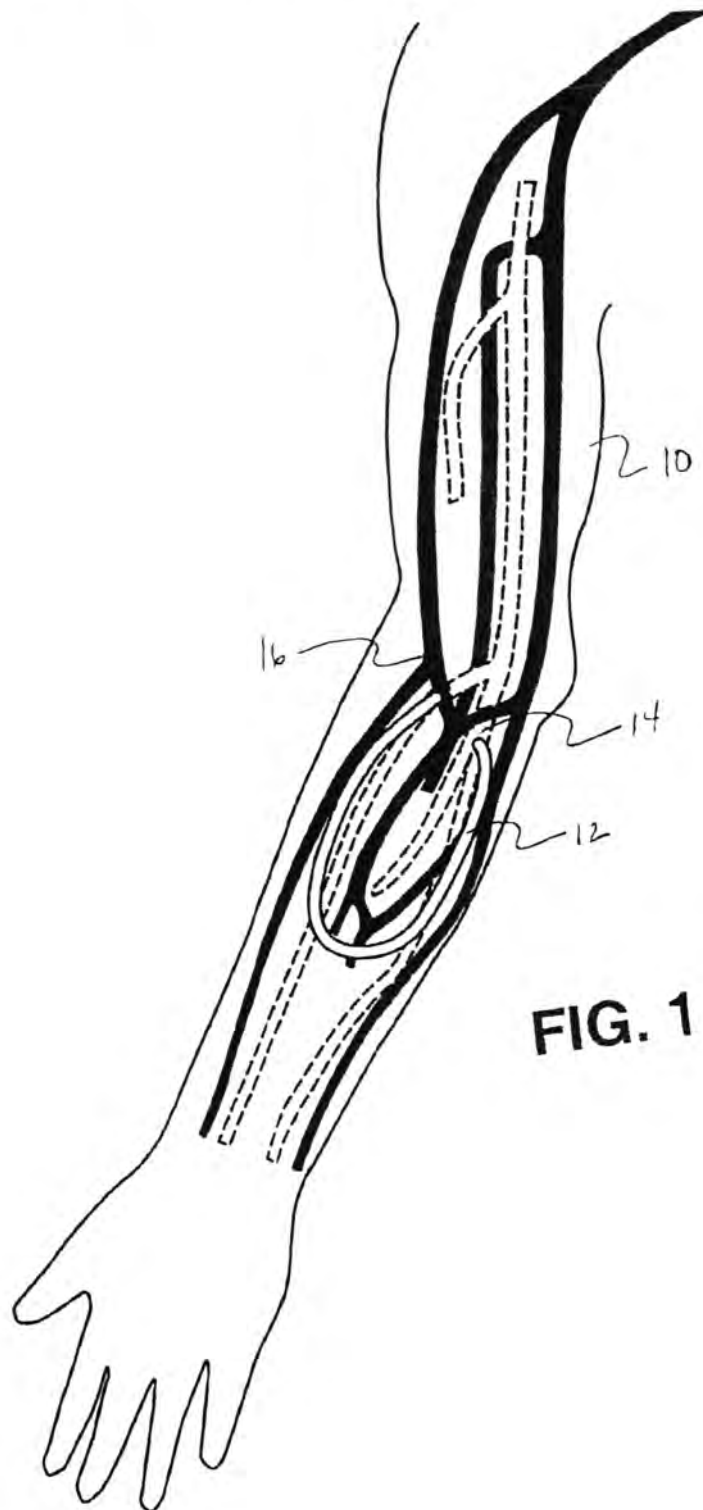
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(21) **Appl. No.:** 10/456,697(22) **Filed:** Jun. 6, 2003**Publication Classification**(51) **Int. Cl.** A61M 5/00(52) **U.S. Cl.** 604/9

An arteriovenous graft system is described. The arteriovenous graft system includes an arteriovenous graft that is well suited for use during hemodialysis. In order to minimize or prevent arterial steal, at least one valve device is positioned at the arterial end of the arteriovenous graft. In one embodiment, for instance, the arteriovenous graft system includes a first valve device positioned at the arterial end and a second valve device positioned at the venous end. In one embodiment, the valve devices may include an inflatable balloon that, when inflated, constricts and closes off the arteriovenous graft. By minimizing or preventing arterial steal, other complications associated with arteriovenous grafts are also avoided. For instance, the present invention is also well suited to preventing arteriovenous graft thrombosis, eliminating dialysis needle hole bleeding, and eliminating or minimizing arteriovenous graft pseudoaneurysm formation.





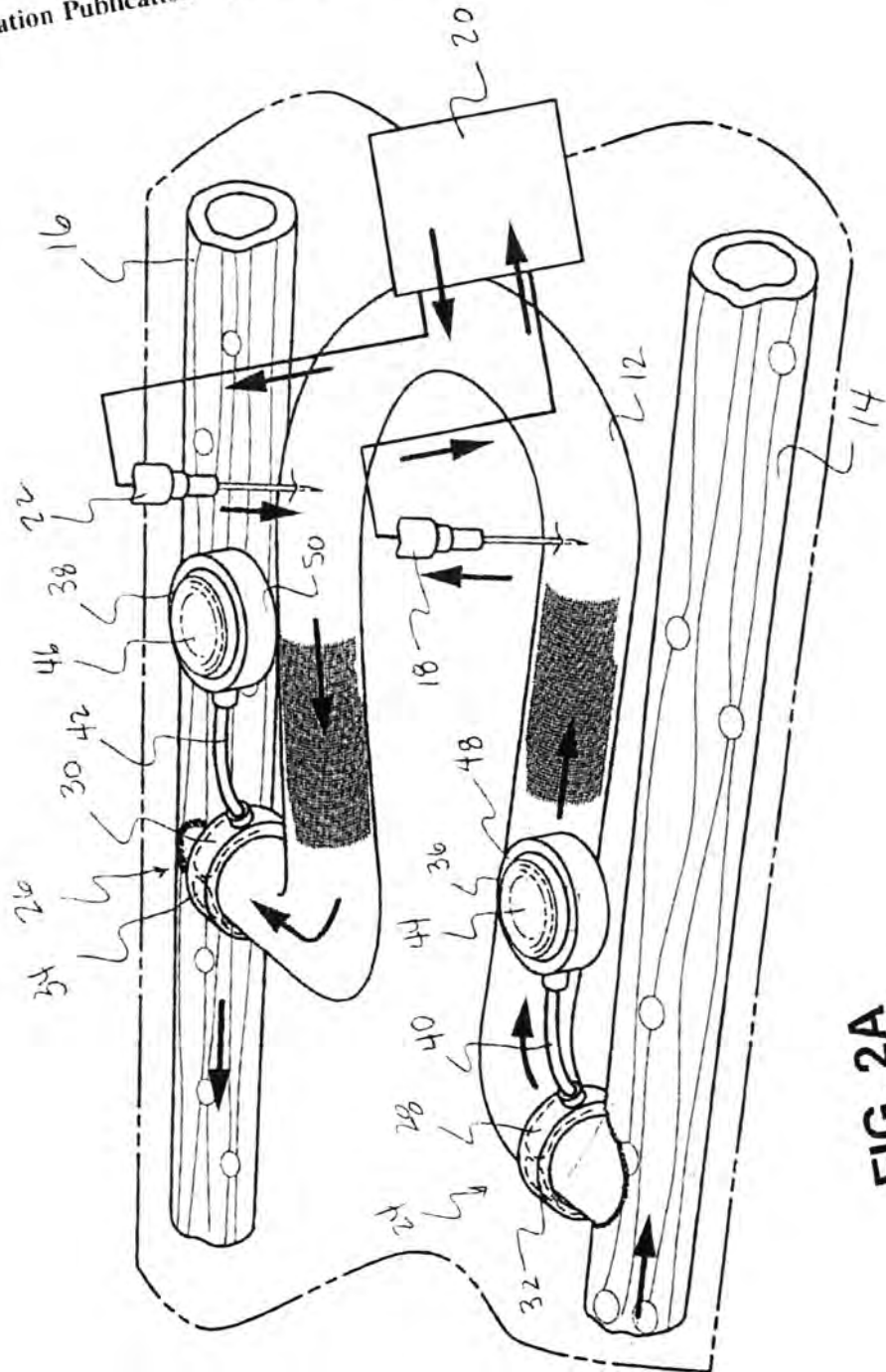


FIG. 2A

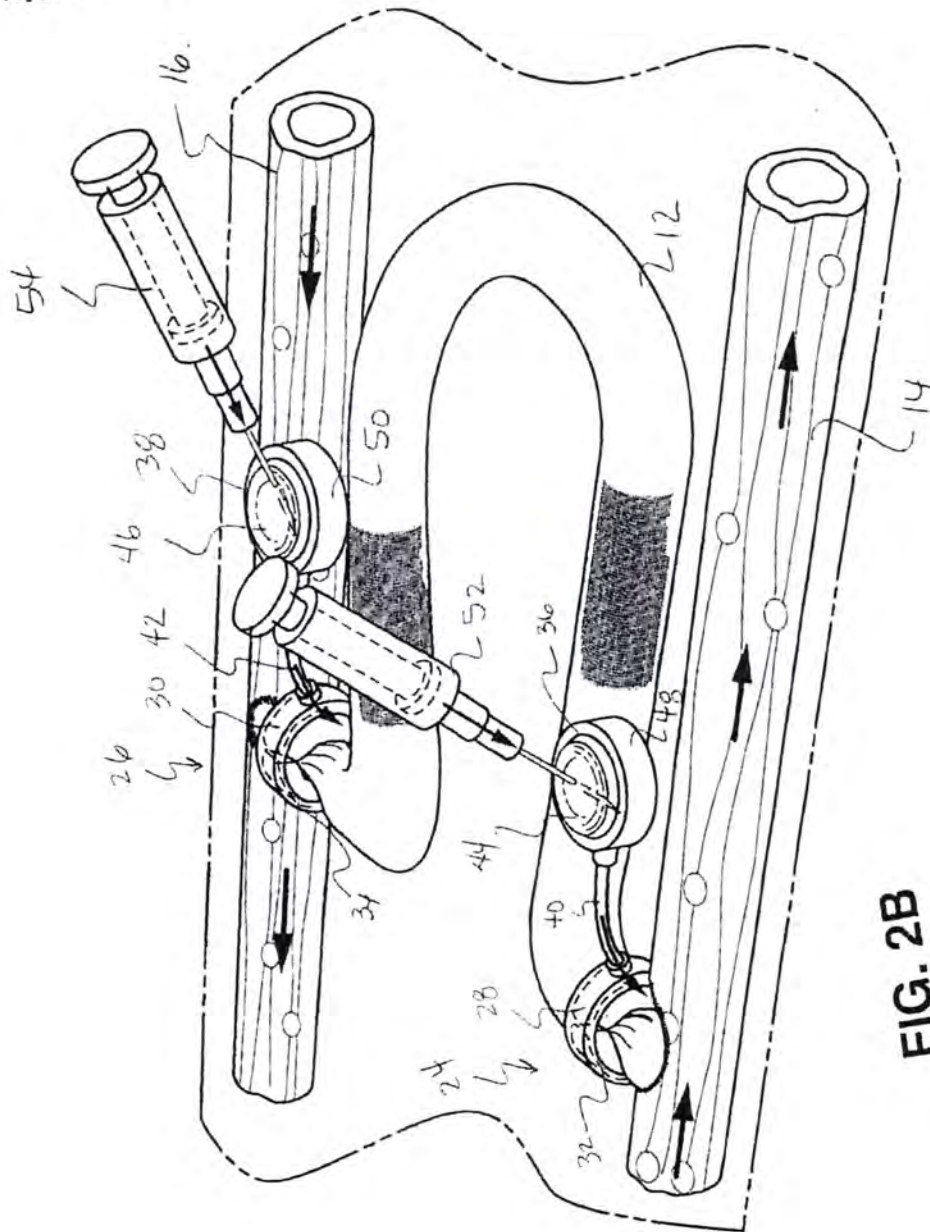


FIG. 2B

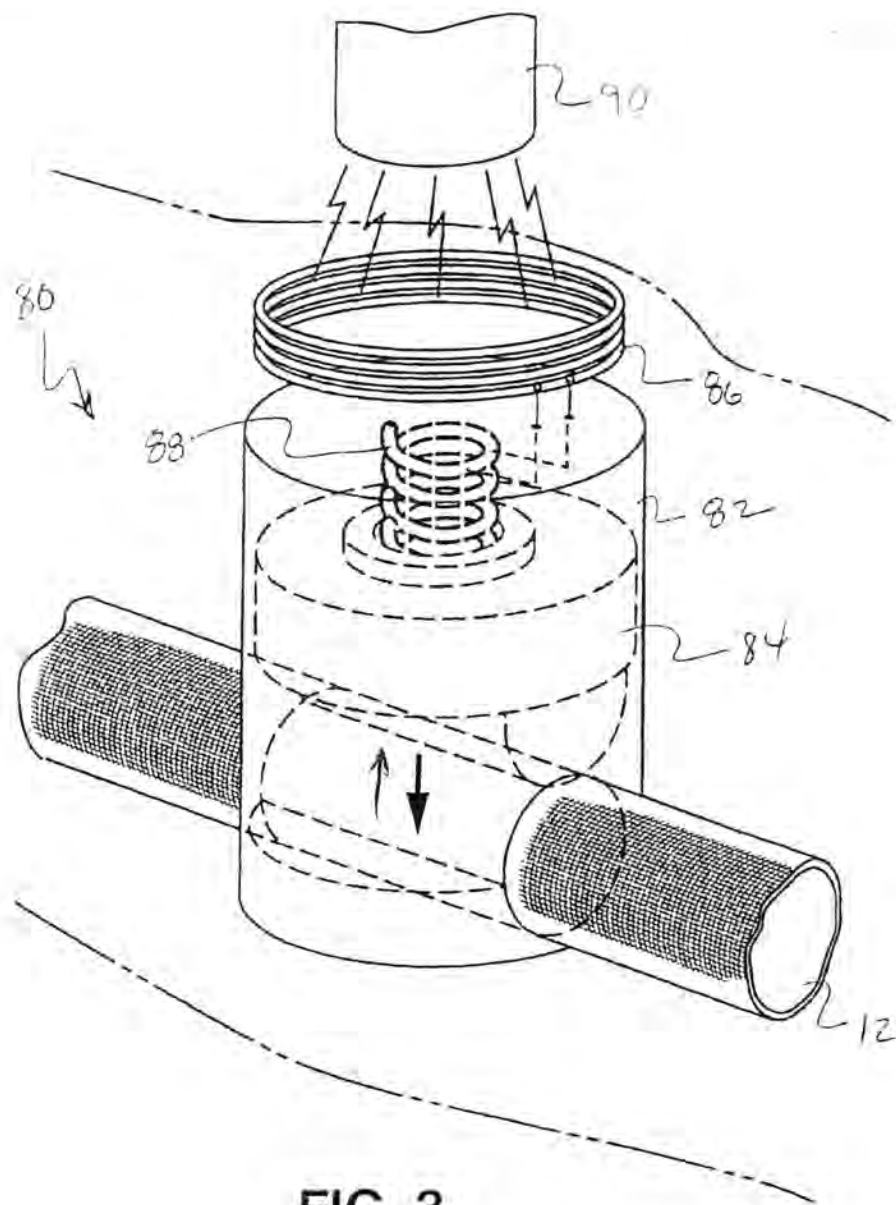
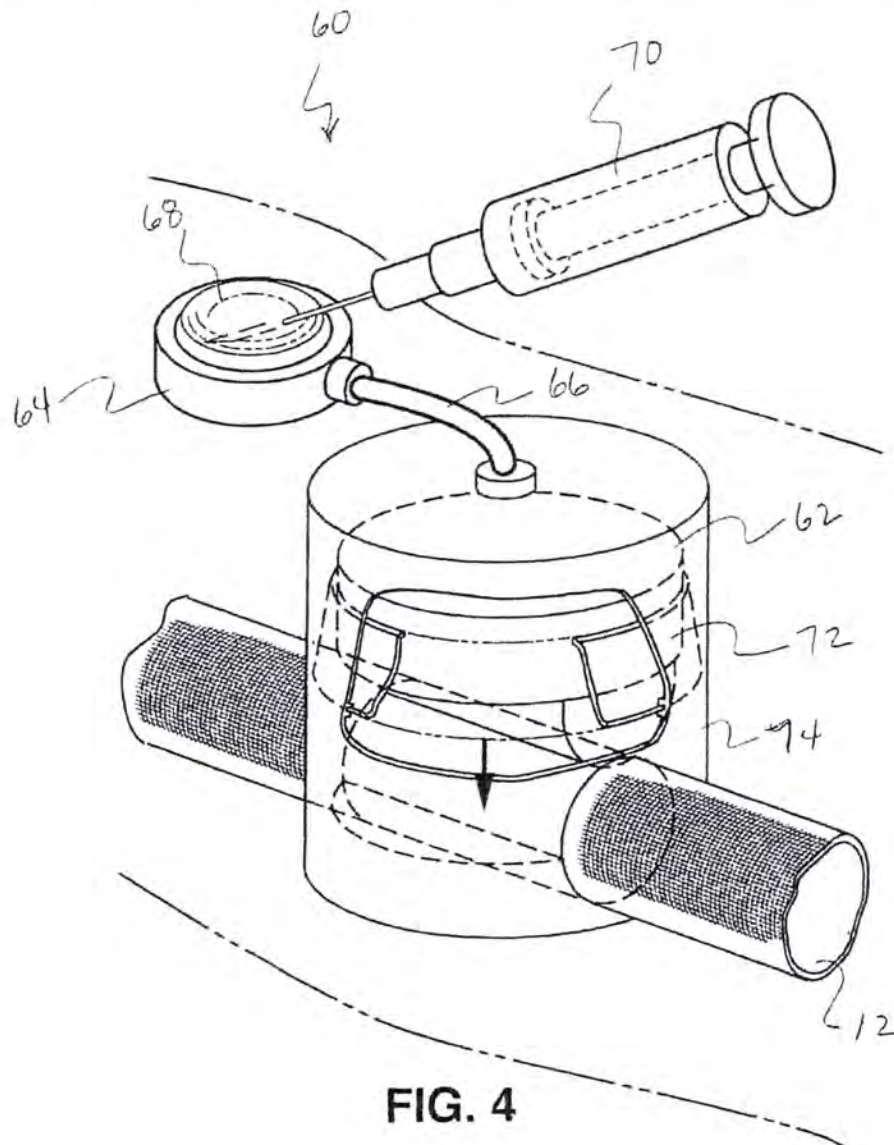
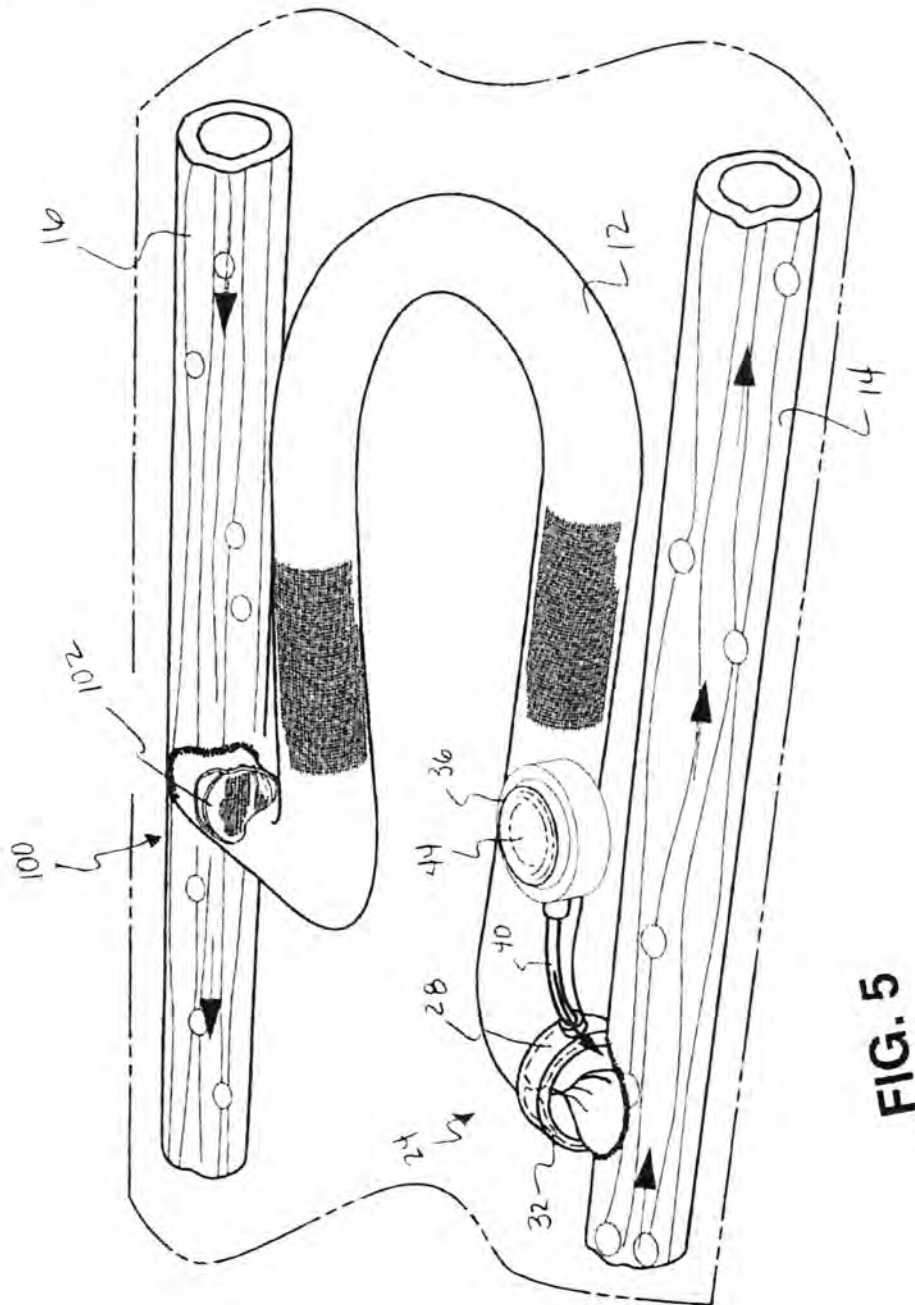


FIG. 3



ROA 714



ARTERIOVENOUS ACCESS VALVE SYSTEM AND PROCESS

BACKGROUND OF THE INVENTION

[0001] The function of kidneys, which are glandular organs located in the upper abdominal cavity of vertebrates, is to filter blood and remove waste products. Specifically, kidneys separate water and waste products of metabolism from blood and excrete them as urine through the bladder. Chronic renal failure is a disease of the kidney in which the kidney function breaks down and is no longer able to filter blood and remove waste substances. Should certain toxic waste substances not be removed from the blood, the toxic substances may increase to lethal concentrations within the body.

[0002] Hemodialysis is a life-sustaining treatment for patients who have renal failure. Hemodialysis is a process whereby the patient's blood is filtered and toxins are removed using an extracorporeal dialysis machine. For hemodialysis to be effective, large volumes of blood must be removed rapidly from the patient's body, passed through the dialysis machine, and returned to the patient. A number of operations have been developed to provide access to the circulation system of a patient such that patients may be connected to the dialysis machine.

[0003] For example, the most commonly performed hemodialysis access operation is a subcutaneous placement of an arteriovenous graft, which is made from a biocompatible tube. The biocompatible tube can be made of, for instance, a fluoropolymer such as polytetrafluoroethylene. One end of the tube is connected to an artery while the other end is connected to a vein. The arteriovenous graft is typically placed either in the leg or arm of a patient.

[0004] Blood flows from the artery, through the graft and into the vein. To connect the patient to a dialysis machine, two large hypodermic needles are inserted through the skin and into the graft. Blood is removed from the patient through one needle, circulated through the dialysis machine, and returned to the patient through the second needle. Typically, patients undergo hemodialysis approximately four hours a day, three days a week.

[0005] Various problems, however, have been experienced with the use of an arteriovenous graft. For example, arterial steal occurs when excessive blood flow through the arteriovenous graft "steals" blood from the distal arterial bed. Arterial steal can prevent the proper supply of blood from reaching the extremity of a patient.

[0006] Various other complications can also occur. For instance, the blood flowing through the arteriovenous graft can often reach turbulent flow rates. This stream of fast moving blood then exits the arteriovenous graft and contacts the vein connected to the graft. This collision between the flow of blood and the vein may cause the development of myointimal hyperplasia which leads to the thickening of the vein walls and a narrowing of the vessel. As the vein narrows, flow through the arteriovenous graft decreases and blood within the graft may ultimately clot.

[0007] The cessation of blood flow through the graft caused by clot formation is known as graft thrombosis. Numerous techniques and medications have been studied in attempts to block the development of the scar tissue. Graft

thrombosis, however, continues to remain a reoccurring complication associated with the use of arteriovenous grafts.

[0008] In view of the above drawbacks, a need currently exists in the art for an arteriovenous graft that can prevent and minimize arterial steal and graft thrombosis. A process for using an arteriovenous graft in minimizing arterial steal and graft thrombosis is also needed.

SUMMARY OF THE INVENTION

[0009] In general, the present invention is directed to subcutaneous arteriovenous graft systems and to processes for using the arteriovenous graft systems in a manner that eliminates or at least reduces arterial steal and graft thrombosis. In one embodiment, for instance, the system includes an arteriovenous graft having an arterial end and an opposite venous end. The arterial end is configured to be connected to an artery to form an arterial anastomosis, while the venous end is configured to be connected to a vein to form a venous anastomosis.

[0010] In accordance with the present invention, the system includes at least one valve device positioned at the arterial end of the arteriovenous graft. In one embodiment, for instance, the valve device comprises an inflatable balloon. The inflatable balloon is positioned so as to restrict blood flow through the arteriovenous graft when inflated. In general, the valve device should be positioned at the arterial end of the arteriovenous graft as close as possible to the intersection of the graft with an artery. For example, the valve device may be positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 10 mm from the intersection of the arteriovenous graft and an artery.

[0011] The inflatable balloon of the valve device may have an annular shape that surrounds the arteriovenous graft. The inflatable balloon may also be a separate structure or may be integral with the arteriovenous graft. When integral with the arteriovenous graft, the arteriovenous graft may include a multi-layered segment located at the arterial end. The multi-layered segment may comprise an inner layer and an outer layer. The inner layer constricts the graft when a fluid is fed in between the inner layer and the outer layer. When having an annular shape, the balloon may be surrounded by a rigid collar that serves to assist the balloon in constricting the graft.

[0012] In order to inflate and deflate the balloon, in one embodiment, the valve device can further include an injection port in fluid communication with the inflatable balloon. The injection port defines a diaphragm configured to receive a hypodermic needle for injecting fluid into or withdrawing fluid from the balloon. Of particular advantage, the injection port may also be subcutaneously implanted.

[0013] In an alternative embodiment, the inflatable balloon may be positioned in operative association with a piston. In this embodiment, when the balloon is inflated, the balloon forces the piston either towards or away from the arteriovenous graft for opening or closing the valve device.

[0014] In addition to the use of a valve device containing an inflatable balloon, the valve device may also comprise a magnetically activated piston. In this embodiment, when a magnetic field is placed in close proximity to the valve device, the piston is moved for either opening or closing the

valve device. For example, in one embodiment, placing a magnetic field in close proximity to the valve device opens the device which normally remains closed.

[0015] In one particular embodiment, the magnetically activated piston may be activated when exposed to a changing magnetic field, such as a pulsing magnetic field. In this embodiment, the valve device may include a coil member configured to convert a changing magnetic field into an electric current. The coil member is in communication with a solenoid. The solenoid is configured to move the piston and open or close the valve device when electric current is received from the coil member.

[0016] In one embodiment, the arteriovenous graft system further includes a second valve device positioned at the venous end of the arteriovenous graft. The second valve device may be any suitable valve device as described above. The second valve device, for instance, may be identical to the first valve device or, alternatively, may be different.

[0017] In general, for most applications, the second valve device is not exposed or subjected to the same fluid pressures that are exerted on the first valve device. In this regard, the first valve device is designed to restrict or stop fluid flow at relatively high pressures. The second valve device, however, may be a low pressure valve device. In one embodiment, for instance, the second valve device may be a check valve positioned at the venous end of the arteriovenous graft. For example, the second valve device may be formed integral with the arteriovenous graft and may be formed from a membrane that allows fluid flow from the arteriovenous graft and into an adjoining vein but prevents fluid flow from the vein into the arteriovenous graft.

[0018] The arteriovenous graft of the present invention is used for hemodialysis. During hemodialysis, two hypodermic needles are inserted into the arteriovenous graft. Blood is removed from the graft using one needle, circulated through a dialysis machine, and returned to the arteriovenous graft through the second needle. When hemodialysis is not being conducted, however, the valve devices of the present invention may be activated in order to minimize arterial steal and prevent thrombosis of the graft.

[0019] For example, in one embodiment of the present invention, when the arteriovenous graft system only includes a single valve device at the arterial end, after hemodialysis has ended, the valve device is closed thus preventing blood flow through the graft. After the valve device is closed, a blood compatible fluid may be injected into the graft using a hypodermic needle. As used herein, a blood compatible fluid refers to any fluid that is biocompatible with the circulation system. For example, in one embodiment, the blood compatible fluid is a heparinized saline solution. The saline solution is used to flush the graft after the valve device is closed in order to remove blood from the graft.

[0020] In another embodiment, after hemodialysis, the valve device is partially closed to a first position thereby constricting the arteriovenous graft and reducing blood flow through the graft. The patient is then monitored over a period of time, such as days or weeks, and the valve device may be selectively opened or closed from the first position until arterial steal is minimized. In this embodiment, the valve device is closed an amount sufficient to reduce blood flow through the graft without slowing the blood flow to a point where blood clots may form.

[0021] As described above, in another embodiment of the present invention, the arteriovenous graft system includes a first valve device at the arterial end and a second valve device at the venous end. In this embodiment, after hemodialysis has ended, the first valve device at the arterial end is closed thereby preventing blood flow through the graft. A hypodermic needle then flushes the graft with a blood compatible fluid evacuating all blood from the graft. After the graft has been flushed with the blood compatible fluid, the second valve device is then closed and the hypodermic needle is removed from the graft.

[0022] Other features and aspects of the present invention are discussed in greater detail below.

BRIEF DESCRIPTION OF THE DRAWINGS

[0023] A full and enabling disclosure of the present invention is set forth in the specification with reference to the following figures.

[0024] FIG. 1 is a side view with cut away portions of a human arm illustrating the placement of an arteriovenous graft.

[0025] FIGS. 2A and 2B are perspective views of one embodiment of an arteriovenous graft system made in accordance with the present invention.

[0026] FIG. 3 is a perspective view of one embodiment of a valve device that may be used in the arteriovenous graft system of the present invention.

[0027] FIG. 4 is a perspective view of another embodiment of a valve device that may be used in the arteriovenous graft system of the present invention; and

[0028] FIG. 5 is a perspective view of still another embodiment of an arteriovenous graft system made in accordance with the present invention.

[0029] Repeated use of reference characters in the present specification and drawings is intended to represent the same or analogous features of the invention.

DETAILED DESCRIPTION OF THE INVENTION

[0030] Reference now will be made to the embodiments of the invention, one or more examples of which are set forth below. Each example is provided by way of explanation of the invention, not as a limitation of the invention. In fact, it will be apparent to those skilled in the art that various modifications and variations may be made in the invention without departing from the scope or spirit of the invention. For instance, features illustrated or described as part of one embodiment may be used in another embodiment to yield a still further embodiment. For example, an arteriovenous graft system may include combinations of the valve devices described below. Thus, it is intended that the present invention cover such modifications and variations as come within the scope of the appended claims and their equivalents. It is to be understood by one of ordinary skill in the art that the present discussion is a description of exemplary embodiments only, and is not intended as limiting the broader aspects of the present invention, which broader aspects are embodied in the exemplary construction.

[0031] In general, the present invention is directed to an implantable arteriovenous graft system that may be used in

carrying out hemodialysis treatments. Although the following description will refer to the arteriovenous graft system being implanted into an arm, it should be understood that the system may be implanted in any suitable location of the body. For example, in other embodiments, the arteriovenous graft system may be implanted into a leg.

[0032] In addition to being well suited for carrying out hemodialysis, the arteriovenous graft system of the present invention also prevents or minimizes arterial steal and graft thrombosis. In particular, the arteriovenous graft system is designed to prevent or minimize blood flow through the graft when hemodialysis is not occurring.

[0033] Referring to FIG. 1, for purposes of explanation, a right arm 10 of a patient is shown. Selected arteries (shown as dotted pathways) are illustrated in conjunction with selected veins (shown as dark pathways). An arteriovenous graft 12 is shown connected at one end to an artery and at an opposite end to a vein. In particular, the arteriovenous graft 12 is connected to the brachial artery 14 and to the cephalic vein 16.

[0034] The arteriovenous graft 12 is made from any suitable biocompatible material. For example, in one embodiment, the graft is made from a fluoropolymer, such as polytetrafluoroethylene, which is commercially available as GORETEX from the W. L. Gore Company.

[0035] Referring to FIGS. 2A and 2B, one embodiment of an arteriovenous graft system made in accordance with the present invention is shown including an arteriovenous graft 12. As illustrated, the arteriovenous graft 12 is connected to an artery 14 and to a vein 16. In order to carry out hemodialysis, a first hypodermic needle 18 is inserted through the skin and into the arteriovenous graft 12. Blood is removed from the arteriovenous graft 12 through the needle and into a dialysis machine 20. In the dialysis machine, waste materials are removed from the blood. After circulating through the dialysis machine 20, the blood is then fed back into the arteriovenous graft 12 through a second hypodermic needle 22.

[0036] In accordance with the present invention, the arteriovenous graft system as shown in FIGS. 2A and 2B further includes at least a first valve device generally 24 positioned at the arterial end of the arteriovenous graft 12. Optionally, the arteriovenous graft system can further include a second valve device generally 26 positioned at the venous end of the arteriovenous graft. The valve devices 24 and 26 are in an open position during normal hemodialysis as shown in FIG. 2A. When hemodialysis has ended, however, the valve devices 24 and 26 are moved to a closed position in order to prevent blood flow through the arteriovenous graft. In this manner, arterial steal is either eliminated or reduced. Further, by reducing arterial steal, graft thrombosis is also prevented.

[0037] In addition to minimizing arterial steal and preventing graft thrombosis, the system and the process of the present invention also offer various other advantages. For example, reducing or stopping blood flow through the arteriovenous graft when hemodialysis is not occurring also prevents the graft from bleeding when the hypodermic needles used to carry out hemodialysis are removed from the graft. Hypodermic needles as shown in FIG. 2B, for instance, usually have a relatively large diameter or gauge.

Thus, when the needles are removed from a graft, bleeding can occur where the needles have previously been. Needle hole bleeding through the graft can result in the formation of scar tissue and graft pseudoaneurysms. These complications, however, may be prevented through the use of the system of the present invention.

[0038] In the embodiment shown in FIG. 2A, the valve devices 26 and 24 each include an inflatable balloon 28 and 30. When inflated, the balloons 28 and 30 constrict the arteriovenous graft 12 for reducing or eliminating blood flow through the graft.

[0039] As shown in FIG. 2A, the inflatable balloons 28 and 30, in this embodiment, have an annular shape that surround the arteriovenous graft 12. As shown, each of the inflatable balloons 28 and 30 are also surrounded by a rigid collar 32 and 34. Each collar 32 and 34 may be included in the system in order to maintain each of the balloons 28 and 30 in the proper position. Further, the collars 32 and 34 also serve to bias the balloon towards the arteriovenous graft 12 when inflated. Each collar 32 and 34 may be made from any rigid biocompatible material. For example, the collars 32 and 34 may be made from a metal, such as titanium, or a plastic material.

[0040] Each annular balloon 28 and 30 may be a separate structure from the arteriovenous graft 12 or may be integral with the graft. When integral with the graft, for instance, the graft may include a multi-layered segment where each of the valve devices is to be located. For example, within the multi-layered segment, the arteriovenous graft 12 may include an outer rigid layer and an inner luminal layer. The balloon 28 and 30 may be formed in between the outer layer and the inner layer. In particular, when a fluid is injected in between the inner and outer layers, the inner layer may expand and constrict the lumen.

[0041] In addition to having an annular shape, it should be understood that each balloon 28 and 30 may have any shape sufficient to constrict the arteriovenous graft when inflated. For instance, in another embodiment, each balloon 28 and 30 may be located on one side of the graft 12. When inflated, the balloons 28 and 30 force opposite sides of the graft together.

[0042] In order to inflate the balloons 28 and 30, in one embodiment as shown in FIGS. 2A and 2B, each valve device may further include an injection port 36 and 38. For example, as shown in FIG. 2A, injection port 36 may be in fluid communication with the balloon 28 via a tubing 40. Similarly, injection port 38 may be in fluid communication with the balloon 30 via a tubing 42. Each injection port 36 and 38 may be configured to be subcutaneously implanted in a patient.

[0043] In the embodiment illustrated in FIG. 2A, injection ports 36 and 38 each include a diaphragm 44 and 46 positioned on one side of a housing 48 and 50. The housings 48 and 50 may be made from any suitable rigid and biocompatible material. For example, each housing may be made from a metal, such as titanium. Each diaphragm 44 and 46, on the other hand, may be made from a material capable of receiving the tip of a hypodermic needle. For example, each diaphragm 44 and 46 may be made from an elastomeric film, such as a silicone membrane.

[0044] As shown particularly in FIG. 2B, in order to inflate or deflate the balloons 28 and 30, hypodermic needles

52 and 54 may inject a fluid into each of the injection ports 36 and 38 through the diaphragms 44 and 46. The fluid travels from the injection ports 36 and 38 through the tubing 40 and 42 and into each respective balloon 28 and 30. Similarly, the hypodermic needles 52 and 54 may also be used to withdraw fluid from the balloons 28 and 30.

[0045] As shown in FIG. 2B, once inflated, the balloons 28 and 30 constrict the arteriovenous graft 12 at the arterial end and at the venous end. The fluid used to inflate the balloons 28 and 30 may vary depending upon the particular application. The fluid may be, for instance, a gas or liquid. In one embodiment, for instance, a saline solution may be injected into the injection ports 36 and 38 for inflating the balloons. In one embodiment, it may take from about 2 ccs to about 6 ccs of fluid to transition each balloon valve 28 and 30 from an open position to a closed position.

[0046] When closed, each valve device should be capable of maintaining its position when exposed to systolic pressure. For example, systolic pressures in arteries may be greater than about 250 mmHg, such as from about 170 mmHg to about 270 mmHg.

[0047] In addition to withstanding relatively high fluid pressures, each of the valve devices 24 and 26 should also be constructed so that the valve devices can constrict the arteriovenous graft as close as possible to the intersection of the graft with the artery 14 and the vein 16. For example, the first valve device 24, in one embodiment, constricts the arteriovenous graft at a distance of from about 5 mm from the arterial anastomosis, such as no greater than about 20 mm from the arterial anastomosis. The position of the second valve device 26 in relation to the venous anastomosis may also be within the above defined limits.

[0048] The methods for using the arteriovenous graft system of the present invention will now be discussed in relation to a system that contains a single valve device positioned at the arterial end of the graft and a system that contains two valve devices as shown in FIGS. 2A and 2B.

[0049] When the arteriovenous graft system of the present invention contains a single valve device positioned at the arterial end, in one embodiment, the valve device may be positioned so as to constrict blood flow through the graft when hemodialysis is not occurring. In this embodiment, arterial steal is not being completely prevented but is being minimized. In particular, the single valve device constricts the graft so that blood flow through the graft continues without clotting but is at a reduced flow rate.

[0050] In this embodiment, the patient's condition may need to be monitored over a period of time, such as days or weeks, and the valve device may be adjusted in order to minimize arterial steal without causing a complete blood stoppage. For instance, over several days or weeks, the arteriovenous graft of the patient may be monitored and the valve device may be adjusted so as to gradually increase or decrease the narrowing of the arteriovenous graft. The ultimate position of the valve will vary depending upon the patient and the location of the arteriovenous graft.

[0051] In an alternative embodiment, the single valve device may be used to completely close off the arteriovenous graft 12 at the arterial end. In this embodiment, during hemodialysis, the valve device 24 is in the open position and the arteriovenous graft 12 is cannulated with the two dialysis

needles 18 and 22 as shown in FIG. 2A. Upon completion of dialysis, a fluid is injected into the injection port 36 of the first valve device causing the balloon 28 to inflate thereby closing the valve device and eliminating arterial blood flow through the graft.

[0052] After the valve device is closed, a blood compatible fluid is then injected into the arteriovenous graft 12 through, for instance, a dialysis needle to flush any residual blood out of the graft. The blood compatible fluid can be, for instance, heparinized saline. The residual blood is flushed out of the graft in order to prevent any clotting.

[0053] In this embodiment, some residual saline remains in the graft until hemodialysis is once again conducted on the patient. This embodiment should only be used when it is determined that substantially no blood from the vein 16 will flow into the graft once valve device 24 is closed.

[0054] In order to prevent any blood flowing from the vein 16 back into the arteriovenous graft 12 after the first valve device 24 has been closed, in one embodiment of the present invention as shown particularly in FIGS. 2A and 2B, the arteriovenous graft system can include the second valve device 26. In this embodiment, the process as described above is repeated. After the arteriovenous graft 12 is flushed with a blood compatible fluid, however, a fluid is injected into the injection port 38 of the second valve device 26 which causes the second valve device to close.

[0055] In addition to the valve devices as illustrated in FIGS. 2A and 2B, in other embodiments, other valve devices may also be utilized in the system of the present invention. For example, referring to FIG. 4, another embodiment of a valve device generally 60 is shown in communication with an arteriovenous graft 12. In this embodiment, the valve device 60 includes a fluid chamber 62 in communication with an injection port 64 similar to the injection ports described above. As shown, injection port 64 includes a diaphragm 68 configured to receive fluid from a hypodermic needle 70.

[0056] The valve device 60 further includes a piston 72 contained within a housing 74. The piston 72 is positioned below the fluid chamber 62.

[0057] In this embodiment, when a fluid is injected from the needle 70 into the injection port 64, the fluid is forced into the fluid chamber 62 via a tube 66. The pressure of the fluid then forces the piston 72 to lower closing the valve and constricting flow through the arteriovenous graft 12.

[0058] Valve device 60 as shown in FIG. 4 may be used in a single valve system of the present invention or in a double valve system of the present invention as illustrated in FIG. 2A.

[0059] Referring to FIG. 3, another embodiment of a valve device generally 80 that may be used in the arteriovenous graft system of the present invention is illustrated. In this embodiment, the valve device 80 includes a housing 82 containing a magnetically actuated piston 84. Specifically, the valve device is configured such that the piston 84 moves between an open and closed position when the valve device is contacted with a magnetic field.

[0060] In this particular embodiment, the valve device 80 includes a coil member 86. The coil member 86 is configured to convert a pulsating magnetic field into an electric

current. As shown, the coil member 86 then supplies the electric current to a solenoid 88. Solenoid 88 then moves the piston 84 to either open or close the valve device.

[0061] In order to activate the valve device 80, a magnetic key 90 is placed close to the skin of a patient. In this embodiment, the magnetic key 90 may be an electromagnet that creates a pulsating magnetic field. As described above, the pulsating magnetic field is then converted into an electric current by the coil member 86. The magnetic key 90 may be configured either to open or to close the valve device. In one embodiment, for instance, the valve device 80 may normally be found in a closed position blocking off the arteriovenous graft 12. When the magnetic key 90, however, is placed adjacent to the patient's skin, the valve device 80 then opens allowing blood to circulate through the graft. In other embodiments, however, it should be understood that the valve device may be configured to close when placed adjacent to the magnetic key 90.

[0062] In addition to the valve device 80 as shown in FIG. 3, other magnetically activated valves may be used in the system of the present invention. For example, in another embodiment of the present invention, the valve device may include a piston in operative association with a permanent magnet. A ferrous plate may be positioned on the opposite side of the arteriovenous graft. Thus, the permanent magnet contained in the piston is attracted to the ferrous surface for closing off the arteriovenous graft. When a magnet with opposite polarity, however, is placed adjacent to the valve device, the permanent magnet contained within the piston is attracted to the reverse magnetic field causing the valve to open.

[0063] Referring to FIG. 5, another embodiment of an arteriovenous graft system made in accordance with the present invention is shown. Like reference numerals have been used in order to identify similar features and elements of other embodiments. As shown, in this embodiment, the arteriovenous graft system includes a first valve device generally 24 at the arterial end of the graft similar to the valve device shown in FIGS. 2A and 2B. In particular, the first valve device 24 includes a balloon 28 that is inflated or deflated using an injection port 36. The balloon 28 is for constricting the arteriovenous graft when desired. As explained above, the first valve device 24, for most applications, is capable of maintaining a closed or constricted position on the graft even when exposed to relatively high fluid pressures. In some embodiments, however, these same pressures are not experienced at the venous end of the graft.

[0064] In this regard, in this embodiment, the arteriovenous graft 12 includes a second valve device generally 100 that may be described as a low pressure valve device when compared to the first valve device 24.

[0065] For example, in one embodiment, the second valve device 100 may be a check valve that allows fluid flow from the graft 12 into the vein 16 but does not permit flow from the vein 16 into the graft 12. In general, any suitable check valve may be used in accordance with the present invention.

[0066] In the embodiment shown in FIG. 5, the second valve device 100 includes a membrane 102 made from, for instance, a polymeric film that is formed or is connected so as to be integral with the arteriovenous graft 12. The membrane 102 may be, for instance, a flap that allows fluid

flow in one direction from the graft 12 into the vein 16. The membrane 102 may be formed from a single piece of film or may be formed from multiple segments. For example, in one embodiment, the film can include one or more slits that permit fluid flow in one direction.

[0067] The arteriovenous graft system in FIG. 5 provides various advantages. For example, in the embodiment shown in FIG. 5, only the first valve device 24 needs to be manually opened or closed.

[0068] In the embodiment shown in FIG. 5, the first valve device is represented as a balloon valve. It should be understood, however, that the first valve device may be any of the other valve devices shown and described above.

[0069] These and other modifications and variations to the present invention may be practiced by those of ordinary skill in the art, without departing from the spirit and scope of the present invention, which is more particularly set forth in the appended claims. In addition, it should be understood that aspects of the various embodiments may be interchanged both in whole or in part. Furthermore, those of ordinary skill in the art will appreciate that the foregoing description is by way of example only, and is not intended to limit the invention so further described in such appended claims.

What is claimed:

1. A subcutaneous arteriovenous graft system comprising:
 - a) an arteriovenous graft having an arterial end and an opposite venous end; and
 - b) at least one valve device positioned at the arterial end of the arteriovenous graft, the valve device comprising an inflatable balloon, the inflatable balloon being positioned so as to restrict blood flow through the arteriovenous graft when inflated.
2. A system as defined in claim 1, further comprising a second valve device positioned at the venous end of the arteriovenous graft, the second valve device also comprising an inflatable balloon, wherein the first valve device and the second valve device substantially prevent blood flow through the arteriovenous graft when the respective balloons are inflated.
3. A system as defined in claim 2, wherein the first valve device is capable of preventing blood flow when exposed to systolic arterial pressure, to between about 170 mmHg to about 270 mmHg.
4. A system as defined in claim 1, wherein the arteriovenous graft is made from a material comprising a fluoropolymer.
5. A system as defined in claim 2, wherein the inflatable balloon of the first valve device and the inflatable balloon of the second valve device have an annular shape that surrounds the arteriovenous graft.
6. A system as defined in claim 1, wherein the valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and an artery.
7. A system as defined in claim 1, further comprising an injection port in fluid communication with the inflatable balloon, the injection port defining a diaphragm configured to receive a hypodermic needle for injecting or withdrawing fluid from the balloon.

8. A system as defined in claim 2, wherein each of the valve devices further comprise an injection port in fluid communication with each of the inflatable balloons, each of the injection ports defining a diaphragm configured to receive a hypodermic needle for injecting or withdrawing fluid from each respective balloon.

9. A system as defined in claim 7, wherein the injection port comprises a metal housing, the diaphragm being located on one surface of the housing.

10. A system as defined in claim 1, wherein the inflatable balloon comprises a multi-layered segment located at the arterial end of the arteriovenous graft, the multi-layered segment comprising an inner layer and an outer layer, the inner layer constricting flow through the arteriovenous graft when a fluid is fed in between the inner layer and the outer layer.

11. A system as defined in claim 5, wherein each valve further comprises an outer collar surrounding each respective inflatable balloon.

12. A system as defined in claim 1, wherein the inflatable balloon is positioned in operative association with a piston, wherein, when inflated, the balloon forces the piston against the arteriovenous graft for constricting same.

13. A system as defined in claim 1, wherein the inflatable balloon is made from a material comprising silicone.

14. A system as defined in claim 1, wherein the inflatable balloon constricts the arteriovenous graft when inflated with from about 2 cc's to about 6 cc's of fluid.

15. A system as defined in claim 1, further comprising a second valve device positioned at the venous end of the arteriovenous graft, the second valve device comprising a check valve.

16. A system as defined in claim 15, wherein the check valve only permits fluid flow out of the arteriovenous graft through the venous end.

17. A system as defined in claim 15, wherein the check valve comprises a membrane positioned within the arteriovenous graft.

18. A system as defined in claim 17, wherein the membrane includes a slit that only allows fluid flow in one direction.

19. A system as defined in claim 17, wherein the membrane comprises a moveable flap that only allows fluid flow in one direction.

20. A subcutaneous arteriovenous graft system comprising:

an arteriovenous graft having an arterial end and an opposite venous end;

a first valve device positioned at the arterial end of the arteriovenous graft, the valve device comprising an inflatable balloon, the inflatable balloon being positioned so as to restrict blood flow through the arteriovenous graft when inflated, the inflatable balloon being in communication with a first injection port, the injection port defining a diaphragm configured to receive a hypodermic needle for injecting or withdrawing fluid from the balloon, the injection port being configured to be implanted subcutaneously;

a second valve device positioned at the venous end of the arteriovenous graft, the second valve device comprising an inflatable balloon, the inflatable balloon being positioned so as to restrict blood flow through the arteriovenous graft when inflated, the inflatable balloon

being in communication with a second injection port, the second injection port defining a diaphragm configured to receive a hypodermic needle for injecting or withdrawing fluid from the inflatable balloon, the second injection port also being configured to be implanted subcutaneously.

21. A system as defined in claim 20, wherein the first valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and an artery and wherein the second valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and a vein.

22. A system as defined in claim 20, wherein the inflatable balloon of the first valve device and the inflatable balloon of the second valve device have an annular shape that surrounds the arteriovenous graft, each of the inflatable balloons being surrounded by an outer collar.

23. A subcutaneous arteriovenous graft system comprising:

an arteriovenous graft having an arterial end and an opposite venous end; and

at least one valve device positioned at the arterial end of the arteriovenous graft, the valve device comprising a piston in fluid communication with a fluid chamber, wherein, when a fluid is forced into the fluid chamber, the piston closes which, in turn, constricts the arteriovenous graft.

24. A system as defined in claim 23, further comprising a second valve device positioned at the venous end of the arteriovenous graft, the second valve device also comprising a second piston in communication with a second fluid chamber, wherein, when a fluid is forced into the fluid chamber, the piston closes which, in turn, constricts the arteriovenous graft.

25. A system as defined in claim 24, wherein the first valve device is capable of preventing blood flow when exposed to systolic arterial pressure in between about 170 mmHg to about 270 mmHg.

26. A system as defined in claim 23, wherein the valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and an artery.

27. A system as defined in claim 24, wherein the first valve device further comprises a first injection port and the second valve device comprises a second injection port, each of the injection ports being in communication with each of the respective fluid chambers, each injection port defining a diaphragm configured to receive a hypodermic needle for injecting or withdrawing fluid from each respective fluid chamber.

28. A subcutaneous arteriovenous graft system comprising:

an arteriovenous graft having an arterial end and an opposite venous end; and

at least one valve device positioned at the arterial end of the arteriovenous graft, the valve device comprising a magnetically activated piston, wherein, when a magnetic field is placed in close proximity to the valve device, the piston is moved for either opening or closing the valve device.

29. A system as defined in claim 28, wherein when a magnetic field is placed in close proximity to the valve device, the piston is moved for opening the valve device.

30. A system as defined in claim 28, wherein the piston is moved when the valve device is placed in close proximity to a changing magnetic field, the valve device further comprising a coil member configured to convert a changing magnetic field into an electric current, the coil member being in communication with a solenoid, the solenoid being configured to move the piston and open the valve device when electric current is received from the coil member.

31. A system as defined in claim 29, wherein the system further comprises an electromagnetic key for opening the valve device when placed in close proximity therein.

32. A system as defined in claim 28, further comprising a second valve device positioned at the venous end of the arteriovenous graft, the second valve device also including a magnetically activated piston, wherein, when a magnetic field is placed in close proximity to the second valve device, the piston is moved for either opening or closing the second valve device.

33. A system as defined in claim 30, further comprising a second valve device, the second valve device comprising a coil member configured to convert a changing magnetic field into an electric current, the coil member being in communication with a solenoid, the solenoid being configured to move a piston and open the valve device when electric current is received from the coil member.

34. A system as defined in claim 28, wherein the valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and an artery.

35. A system as defined in claim 28, further comprising a second valve device positioned at the venous end of the arteriovenous graft, the second valve device comprising a check valve.

36. A system as defined in claim 35, wherein the check valve only permits fluid flow out of the arteriovenous graft through the venous end.

37. A system as defined in claim 35, wherein the check valve comprises a membrane positioned within the arteriovenous graft.

38. A system as defined in claim 37, wherein the membrane includes a slit that only allows fluid flow in one direction.

39. A system as defined in claim 37, wherein the membrane comprises a moveable flap that only allows fluid flow in one direction.

40. A process for reducing arterial steal in an arteriovenous graft comprising:

providing an arteriovenous graft having been subcutaneously implanted in a patient, the arteriovenous graft including an arterial end in fluid communication with an artery and a venous end in fluid communication with a vein, the arteriovenous graft further comprising at least one valve device positioned at the arterial end;

partially closing the valve device to a first position thereby constricting the arteriovenous graft and reducing blood flow through the graft without stopping blood flow; and

selectively opening or closing the valve device from the first position over a period of time based upon a clinical

course of the patient until arterial steal is minimized within the arteriovenous graft.

41. A process for reducing arterial steal and graft thrombosis in an arteriovenous graft comprising:

providing an arteriovenous graft having been subcutaneously implanted in a patient, the arteriovenous graft including an arterial end in fluid communication with an artery and a venous end in fluid communication with a vein, the arteriovenous graft further comprising at least one valve device positioned at the arterial end of the graft;

closing the first valve device at the arterial end of the arteriovenous graft and thereby stopping blood flow through the arteriovenous graft;

injecting into the arteriovenous graft through a hypodermic needle a blood compatible fluid for flushing the arteriovenous graft and evacuating blood from the graft;

removing the hypodermic needle from the arteriovenous graft.

42. A process as defined in claim 41, wherein the arteriovenous graft further comprises a second valve device positioned at the venous end of the graft and wherein the process further comprises the step of closing the second valve device after the arteriovenous graft has been flushed with the blood compatible fluid.

43. A process as defined in claim 41, wherein the blood compatible fluid comprises a saline solution.

44. A process as defined in claim 42, wherein the first valve device and the second valve device both include an inflatable balloon, the inflatable balloon being positioned so as to restrict blood flow through the arteriovenous graft when inflated.

45. A process as defined in claim 44, wherein the inflatable balloon of the first valve device and the inflatable balloon of the second valve device have an annular shape that surrounds the arteriovenous graft.

46. A process as defined in claim 42, wherein the first valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and the artery and wherein the second valve device is positioned so as to restrict blood flow through the arteriovenous graft at a location that is less than about 20 mm from the intersection of the arteriovenous graft and the vein.

47. A process as defined in claim 44, wherein the first valve device and the second valve device each further comprise an injection port in fluid communication with each respective inflatable balloon, each injection port defining a diaphragm configured to receive a hypodermic needle for injecting or withdrawing fluid from each respective balloon.

48. A process as defined in claim 45, wherein the first valve device and the second valve device each further comprise an outer collar surrounding each respective inflatable balloon.

49. A process as defined in claim 42, wherein the first valve device and the second valve device each comprise a piston in communication with a fluid chamber, wherein, when a fluid is forced into each respective fluid chamber, each respective piston closes which in turn constricts the arteriovenous graft.

50. A process as defined in claim 42, wherein the first valve device and the second valve device each comprise a magnetically activated piston, wherein, when a magnetic field is placed in close proximity to each valve device, each respective piston is moved for opening or closing the valve device.

51. A process as defined in claim 50, wherein the first valve device and the second valve device each open or close when exposed to a changing magnetic field, each valve device further comprising a coil member configured to convert a changing magnetic field into an electric current, the coil member being in communication with a solenoid, the solenoid being configured to move each respective piston and open or close each respective valve device when an electric current is received from the respective coil member.

52. A process as defined in claim 42, wherein the second valve device comprises a check valve.

53. A subcutaneous arteriovenous graft system comprising

an arteriovenous graft having an arterial end and an opposite venous end;

a first valve device positioned at the arterial end of the arteriovenous graft; and

a second valve device positioned at the venous end of the arteriovenous graft, the second valve device comprising a check valve.

54. A system as defined in claim 53, wherein the first valve device comprises a fluid actuated valve or a magnetically actuated valve.

55. A system as defined in claim 53, wherein the check valve comprises a membrane located within the arteriovenous graft, the membrane only allowing fluid flow out through the venous end of the graft.

EXHIBIT 2



From: Tom O'Hanlan
Sent: Fri, 26 Sep 2014 19:17:56 +0000
To: sjohnson@creativasc.com
Cc: David L. Cull, M.D.; Melanie Ginn
Subject: Re: TOUR + DINNER INQUIRY
Attachments: image001.jpg

That will work. And dinner any of those dates. Thank you!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 26, 2014, at 10:56 AM, "sjohnson@creativasc.com" <sjohnson@creativasc.com> wrote:

Tom –

I am coming over to TriTech USA near you on Tuesday. Would it be possible to meet around 1PM at your place? If that can work, I would like to forward a nondisclosure agreement prior to our discussion. Then after that, you, David and I can have dinner – perhaps on one of the nights I listed (October 2, 7-8 and 13)...

Steve

<image001.jpg>

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From: Tom O'Hanlan [<mailto:tom@sealevel.com>]
Sent: Friday, September 26, 2014 1:52 PM
To: David L. Cull, M.D.
Cc: sjohnson@creativasc.com
Subject: Re: GETTING TOGETHER TO HEAR STUART'S DRAFT STORIES

All work for me. At some point I'd like to show you our plant in Liberty. I can fill your in-basket with propaganda until then.....

SEALEVEL_01273

ROA 725

Thanks,

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 26, 2014, at 10:39 AM, David L. Cull, M.D. <DCull@ghs.org> wrote:

All would work except Oct 7.

Sent from my iPhone

On Sep 26, 2014, at 1:37 PM, "sjohnson@creativasc.com" <sjohnson@creativasc.com> wrote:

Like I have said before, coming from the South, I realize that there is no "family tree" in the South...just a "family bush!"

I hope we can arrange a time when the three of us can get together. David, I know during the day is tough for your schedule, how about a dinner together one night and I can hear all the Virginia legends you guys will throw out for 2 hours??

I have the nights of October 2, 7-8 and 13 open. Can any of those work for the two of you?

Steve

<image001.jpg>

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From: David L. Cull, M.D. [<mailto:DCull@ghs.org>]

Sent: Friday, September 26, 2014 12:35 PM

SEALEVEL_01274

ROA 726

To: Tom O'Hanlan; sjohnson@creativasc.com
Subject: RE: CIRCUIT BOARD NEED

Amazing! I hope that Steve can arrange for me to make that meeting.

David

From: Tom O'Hanlan [<mailto:tboh@sealevel.com>]
Sent: Friday, September 26, 2014 12:16 PM
To: sjohnson@creativasc.com
Cc: David L. Cull, M.D.
Subject: Re: CIRCUIT BOARD NEED

Steve- small world! Upon reviewing your website I discovered that Dr. David Cull is on your team. His dad knew my dad in Virginia (both surgeons), and we have corresponded recently.

I look forward to meeting you both!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 26, 2014, at 9:04 AM, "sjohnson@creativasc.com" <sjohnson@creativasc.com> wrote:

Tom –

I look forward to talking sometime over the next week.

Steve

<image001.jpg>

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SEALEVEL_01275

ROA 727

From: Tom O'Hanlan [<mailto:tboh@sealevel.com>]
Sent: Friday, September 26, 2014 11:36 AM
To: Matt Gevaert
Cc: sjohnson@creativasc.com;
<matt.gevaert@kiyatec.com>; Frank Patterson
Subject: Re: CIRCUIT BOARD NEED

Hi Steve,

Matt is most generous in his praises. We are a 28 year old upstate (Liberty) company that designs and manufactures complex electronic systems for the military and Fortune 500. We have a new \$2mm assembly line and some very good engineers.

Here is our website:
www.sealevel.com

I am traveling today but in the office all next week.
I'm happy to meet at your convenience
Thank you both,

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 26, 2014, at 7:46 AM, Matt Gevaert
<matt@kiyatec.com> wrote

Steve,

I couldn't be more pleased to introduce you to Tom O'Hanlan of Sealevel Systems (copied). I know he's out of the office today, but should be back in next week.

We have been working with them for about a year and have been regularly blown away by what they can do in this space. You won't believe the

SEALEVEL_01276

ROA 728

capability you have right in your backyard and didn't know it!

They draw their business lines carefully between things that they do and things that they don't, so Tom will have to talk to you to figure out what the potential fit is. But they absolutely need to be part of this conversation for you and I'll leave it to y'all to take it from here.

Cheers, Matt

On Sep 25, 2014, at 4:47 PM,
sjohnson@creativasc.com wrote:

Matt –

Again, congrats on your NCI award! Nondilutive funding is nothing short of magic.

I meant to ask you if in the course of your new product development you knew of a circuit board developer and manufacturer in the area? We have specs developed for a board which would be the brains behind the actuator of our Generation 2 Hemoaccess Valve System®. We have discovered distant

SEALEVEL_01277

manufacturers but would ideally like to keep it in SC if at all possible.

Thanks...

SJ

<image003.jpg>

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ROA 730

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Steve Johnson
President & CEO
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Greenville, South Carolina 29601
864.242-4700 / Fax 864.527-3153
Cell: 864.480.8886
Visit us at www.creativas.com



SEALEVEL_01279

ROA 731

Steve Johnson

President & CEO

CreatiVasc Medical Inc.

330 East Coffee Street, Suite 4016

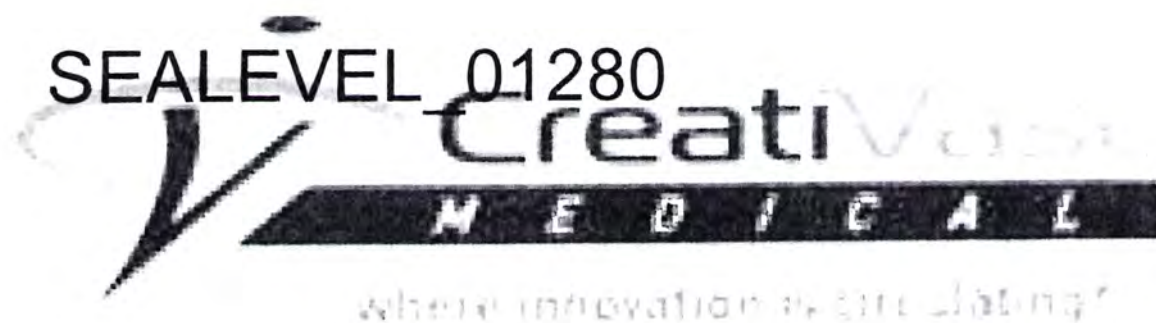
Greenville, South Carolina 29601

864-242-4700 / Fax: 864-527-3153

Cell: 864-380-8885

Visit us at www.CreatiVasc.com

SEALEVEL_01280



ROA 732



EXHIBIT 3

From: Tom O'Hanlan
Sent: Mon, 13 Oct 2014 20:58:25 +0000
To: sjohnson@creativasc.com
Subject: Re: FOLLOWING UP

Steve-

Thank you. I just meant that Andrew is pretty sharp, and might want to take the whole thing himself. I appreciate your confidence in us. It won't be gratis, but I want you to know that I'm more interested in a long-term partnership than a quick buck.

Do you have any more passes to the show?

Thanks,

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Oct 13, 2014, at 4:30 PM, "sjohnson@creativasc.com" <sjohnson@creativasc.com> wrote:

Tom –

Thanks once more for your hospitality and insight this morning. As I indicated to you – and have reaffirmed to Medusensor, I would like to have Sealevel involved in the application and powering of the TDK chip with their pressure sensor technology. I would feel much more comfortable if they had “adult supervision and experience” in this project. Please let me know a round number of what you think your team’s time will be to oversee the chip/sensor incorporation. This should not be a “gratis” project on your part.

I look forward to seeing you at SCBIO. Perhaps we can sit and talk for a few minutes while you are here. I share your vision of Sealevel having a significant opportunity in the med device space. I would also like to link you up with Brian McMurray at Atex Technologies in Pinehurst (actually Pinebluff, NC!) because I can see the two of you coming up with a dozen applications where your two areas of technical expertise intersect.

Steve

<image002.jpg>

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EXHIBIT 4



CUSTOMER SUPPLY AGREEMENT

This SUPPLY AGREEMENT ("Agreement"), dated as of October 28th, 2014 (the "Effective Date"), is by and between Sealevel Systems, Inc., a South Carolina corporation located at 2779 Greenville Highway, Liberty, SC 29657 ("Sealevel"), and CreatiVasc Medical Inc., a South Carolina corporation located at 300 East Coffee Street, Greenville, SC, 29601 ("Customer"). Sealevel and Customer may each be referred to as a "Party" and collectively referred to as the "Parties."

Background

- A. Customer is engaged in, among other things, providing advanced biomedical technology for addressing the complications associated with hemodialysis. Customer desires to have Sealevel design and manufacture the motor control and valve monitor electronics (both hardware and software) for use in the CreatiVasc Hemoaccess Valve System[®] (the "System").
- B. Sealevel desires to design and manufacture certain of the Product, as defined below, and provide to customer, and Customer desires to procure Product from Sealevel.
- C. The Parties wish to establish terms and conditions under which the Product will be ordered and purchased by Customer and supplied to Customer by Sealevel.

Accordingly, the Parties agree as follows:

1. **Scope.** Sealevel agrees to design, manufacture, sell and deliver to Customer hardware and software (the "Product") used in the System's handheld actuator and implanted balloon pressure monitoring and reporting devices in accordance with the specifications set forth in Exhibit A, which is attached hereto and incorporated herein by reference (such specifications, the "Specifications"). Sealevel shall be responsible for procuring all materials associated with the manufacture of the Product, as well as assembling and testing the Product. During the term of this Agreement, (i) Sealevel shall be the exclusive supplier of the Product to Customer; (ii) Customer shall not, directly or indirectly, purchase or order the Product, or any other good substantially similar to the Product, from any person or entity other than Sealevel.
2. **Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and expire on the date this Agreement is terminated pursuant to the provisions of Section 11 or 12 below.
3. **Purchase Orders; Price.** Orders for the Product shall be made by Customer by written or electronic orders issued by Customer to Sealevel substantially in the form of Exhibit B, attached hereto and incorporated herein by reference (each such order, a "Purchase Order"). The Purchase Order shall specify the dates and quantities of Product to be delivered and the current price for the Product. The price for the Product will be agreed upon in writing by the Parties and may not be changed except as agreed upon in writing by the Parties. On a regular basis during the Term, the Parties will discuss possible price reductions based on the cost of

Initial: SJ

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raw materials and components and the quantity of Product purchased and forecast to be purchased by Customer. If market prices for Product similar to the Product decrease during the term of this Agreement, Sealevel will use commercially reasonable efforts to offer decreased prices to Customer for Product. If Customer requests changes to the Product, the Parties will discuss possible price increases or decreases proportional to Sealevel's actual cost increases or decreases caused by such changes.

4. **Terms of Payment.** On or after shipment of Product to Customer under a Purchase Order, Sealevel shall issue an invoice in the form of Exhibit C to Customer (the "Invoice"). Payments shall be due net thirty (30) days from the date of shipment or the date of Invoice, whichever is later.
5. **Delivery.** Product will be delivered in accordance to the dates supplied in writing by Customer on Purchase Orders and accepted by Sealevel in writing. Lead time of the Product shall be in accordance with the lead time stated as part of the product quotation provided by Sealevel in the form of Exhibit D to Customer (the "Quotation") and validated at the time of order placement based on current market and supply conditions. Unless otherwise expressly agreed to in writing by Sealevel, Purchase Order(s) are non-cancellable/non-returnable, but delivery of some or all the Product in a Purchase Order may be rescheduled up to three (3) months after the scheduled delivery date, provided that written notice of rescheduling is received by Sealevel at least thirty (30) days before the originally-scheduled delivery.
6. **Intellectual Property.** Sealevel will not be acquiring any intellectual property rights in the System or in any pre-existing intellectual property or technology of Customer or Customer's customers or Customer's vendors. Sealevel will own and retain intellectual property rights for Sealevel's pre-existing intellectual property and technology, and for any concepts developed by Sealevel while performing under this Agreement.
7. **Title, Risk of Loss and Claims.** Upon shipment of the Product to Customer pursuant to this Agreement and under a Purchase Order, title to the Product including risk of loss shall pass to Customer. Customer must make any claims against Sealevel for shortages in quantities shipped within sixty (60) business days from the date of receipt of Product.
8. **Warranty.** Sealevel shall, at its option and sole expense, repair or replace any Product, or any portion thereof, that does not conform to the Sealevel Standards which are set forth in Exhibit E, attached hereto and incorporated herein by reference (the "Warranty"). This provision shall survive the expiration or termination of this Agreement.
9. **Intentionally Omitted.**
10. **Packaging.** All shipments shall be adequately packaged to prevent any damage during shipment. Any goods damaged in shipment shall be repaired or replaced under the Warranty set forth in Section 8. All packaging shall have the following information on the outside of each box: (i) Purchase Order number; and (ii) quantity of Product in box.

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11. Force Majeure. Neither Sealevel nor Customer shall be considered in default or be held liable for any delay or failure to perform its obligations under this Agreement if such delay or failure arises directly or indirectly out of an act of nature, war, strike, lockout, trade dispute, fire, quarantine restriction, governmental action or by causes beyond the reasonable control of such Party. Provided that the affected Party makes all commercially reasonable efforts to mitigate such delay or failure, (a) any obligation of Sealevel or Customer affected by one or more such events will be postponed until the causes underlying the force majeure has been eliminated, at which time the obligation will again be in effect, and (b) any loss of time by the force majeure will not be held against the Party who was unable to comply with its obligations under this Agreement because of the force majeure, and the deadline for such Party's obligations will be extended by the number of days of the underlying force majeure event. The other Party may terminate this Agreement on ten (10) days written notice if such force majeure event lasts for more than thirty (30) days.

12. Termination

- (a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated (i) upon the mutual written agreement of the Parties to so terminate; (ii) by either Party upon a breach of the other Party's obligations hereunder that such Party fails to cure within ten (10) business days after written notice of such breach from the non-breaching Party, or if such breach is not capable of cure; provided, however, that if such breach is capable of cure but cannot reasonably be cured by such Party within ten (10) business days, then the non-breaching Party will not be entitled to terminate this Agreement if such Party commences to cure such breach within ten (10) business days after written notice from the non-breaching Party and diligently and in good faith continues to cure such breach and the breach is actually cured within sixty (60) days; or (iii) after the tenth (10th) anniversary of the Effective Date for convenience at any time upon (A) ninety (90) days' written notice from Customer to Sealevel, or (B) ninety (90) days' written notice from Sealevel to Customer.
- (b) A Party's right to terminate hereunder shall be in addition to any other rights and remedies such Party may have hereunder or under applicable law, subject to the limitations set forth in this Agreement. If Sealevel terminates for Customer's breach, Customer will take delivery of and pay the full price for the remainder of open Purchase Orders (if any). If Customer terminates for Sealevel's breach, Customer may require delivery of Product on outstanding Purchase Orders. If Customer terminates for convenience, Customer will take delivery of and pay the full price for the remainder of open Purchase Orders (if any).

13. Indemnification.

- (a) Customer shall indemnify and hold harmless Sealevel, together with its directors, officers, employees, agents, and shareholders, from and against any and all Damages (hereinafter defined), and from any and all Actions (hereinafter defined) of any nature whatsoever which are asserted or made by third-parties (collectively, "Claims") against Sealevel arising out of or related to, (i) injury to or death of any person or damage to, or

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destruction of, property arising directly out of, or in any way resulting from, the acts or omissions, whether negligent or otherwise, of Customer, its employees, subcontractors, or agents in performance of its obligations under this Agreement, except to the extent such Claims are the result of the unauthorized acts, gross negligence or willful misconduct of Sealevel, its directors, officers, employees, agents or shareholders; (ii) infringement or misappropriation of a third party's patent, copyright, trade secret or other intellectual property; or (iii) a violation by Customer of its obligations under Section 14 below. This Section shall survive the expiration or termination of this Agreement indefinitely,

(h) Sealevel shall indemnify and hold harmless Customer, together with its directors, officers, employees, agents, and shareholders, from and against any and all Claims by reason of (i) injury to or death of any person or damage to, or destruction of, property arising directly out of, or in any way resulting from, the acts or omissions, whether negligent or otherwise, of Sealevel, its employees, subcontractors, or agents in performance of its obligations under this Agreement, except to the extent such Claims are the result of the unauthorized acts, gross negligence or willful misconduct of Customer, its directors, officers, employees, agents or shareholders; or (ii) infringement or misappropriation of a third party's patent, copyright, trade secret or other intellectual property by Sealevel's pre-existing intellectual property and technology while performing under this Agreement; or (iii) a violation by Sealevel of its obligations under Section 14 below. This Section shall survive the expiration or termination of this Agreement indefinitely. In no event shall Sealevel's indemnification obligation hereunder exceed the amount set forth in Section 16.

(e) The Party seeking indemnity will give the indemnifying Party prompt notice of any claim, provide reasonable assistance to the indemnifying Party in the defense of the claim, and allow the indemnifying Party sole control over the litigation or settlement of such claim; provided, however, that the indemnifying Party will not discontinue or settle such claim in a manner that does not unconditionally release the Party seeking indemnity without such Party's prior written consent, which shall not be unreasonably withheld.

(d) This Section 13 states the indemnifying Party's sole liability, and the other Party's exclusive remedy, for infringement or misappropriation of any third party's patent, copyright, trademark, trade secret or other intellectual property.

(e) Definitions.

i. "Action" means any claim, action, cause of action, suit (whether in contract or tort or otherwise), litigation (whether at law or in equity and whether civil or criminal), controversy, assessment, grievance, arbitration, investigation, audit, opposition, interference, hearing, mediation, charge, complaint, demand, notice or proceeding to, from, by or before any Governmental Authority or any mediator.

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- ii. "Damages" means all losses, liability, damages, deficiencies, claims, judgments, interest, costs, amounts paid in settlement, liabilities, fines, penalties, expenses and fees of whatever nature and kind (including court costs and reasonable experts', attorneys' and other professionals' fees and expenses), and any other cost of settlement, investigation, defense, arbitration and other enforcement costs.
- iii. "Governmental Authority" means any court, administrative agency or commission or other United States, federal, national, provincial, state, local, foreign or other governmental authority, of any nature (including any government, quasi-governmental authority, instrumentality, board, bureau, agency, court, commission or any regulatory, administrative or other department, agency or branch of any of the foregoing) or any body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

14. Confidential Information.

- (a) As to any technical information or other information exchanged by the Parties during this Agreement, any Party receiving information (the "Receiving Party") from the other Party (the "Disclosing Party") under this Agreement shall regard such information (whether written, oral, computer-based, or otherwise) as confidential and preserve the Disclosing Party's proprietary rights as to such information. The Receiving Party shall not, without prior written consent from the Disclosing Party, disclose such information to any third party or use such information for its own benefit except for the purposes of this Agreement. The Receiving Party shall take all necessary precautions to ensure that all its employees, agents, officers, directors, and subcontractors treat such information as confidential and do not divulge such information. All such information provided to the Receiving Party shall remain the sole property of the Disclosing Party. The Receiving Party's obligations under this Section shall survive the termination of this Agreement for a period of five (5) years following the termination date.
- (b) Each Party hereby agrees that the Receiving Party shall have no such obligations with respect to information that (i) is or becomes publicly available through no breach of this Agreement by the Receiving Party; (ii) is approved for release by the written authorization of the Disclosing Party; (iii) becomes known to the Receiving Party by a source that had the right to disclose it without restriction; (iv) was known by the Receiving Party prior to disclosure; or (v) is independently developed by the Receiving Party.
- (c) It is not a breach of this Section 14 for a Receiving Party to disclose information that is required to be disclosed by law; provided, however, that in the event of a proposed disclosure pursuant to this provision, the Receiving Party shall give written notice to the Disclosing Party of such disclosure not less than ten (10) days prior to such disclosure or otherwise as soon as possible.

15. ARBITRATION. ANY DISPUTE, CLAIM, DEMAND OR CONTROVERSY ("DISPUTE") ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT (INCLUDING THE PERFORMANCE OF EACH PARTY'S OBLIGATIONS AND A PURPORTED BREACH THEREOF), SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

THE AGREEMENT OF THE PARTIES TO ARBITRATE COVERS ALL DISPUTES OF EVERY KIND RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES. DISPUTES INCLUDE, WITHOUT LIMITATION, ACTIONS FOR BREACH OF CONTRACT WITH RESPECT TO THIS AGREEMENT, THE INTERPRETATION OF THIS AGREEMENT, THE PERFORMANCE OF EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT, AND THE RELATIONSHIP OF THE PARTIES HEREUNDER, AS WELL AS ANY CLAIM BASED UPON TORT OR ANY OTHER CAUSES OF ACTION. THE FORUM FOR THE ARBITRATION SHALL BE GREENVILLE COUNTY, SOUTH CAROLINA, AND THE GOVERNING LAW FOR THE ARBITRATION SHALL BE THE LAW OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. THE ARBITRATOR SHALL BE A MUTUALLY AGREED UPON MEMBER OF THE SOUTH CAROLINA BAR. IF THE PARTIES SHOULD BE UNABLE TO AGREE ON AN ARBITRATOR, THEN THEY SHALL EACH SELECT A PROPOSED ARBITRATOR WHO TOGETHER WILL SELECT THE SINGLE ARBITRATOR TO ADMINISTER THE PROCEEDING. EACH PARTY SHALL BEAR ITS OWN FEES AND EXPENSES WITH RESPECT TO THE ARBITRATION AND ANY RELATED PROCEEDING AND THE PARTIES SHALL SHARE EQUALLY THE FEES/EXPENSES OF THE ARBITRATOR.

THE RULES OF ARBITRATION SHALL BE THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AS MODIFIED BY ANY OTHER INSTRUCTIONS THAT THE PARTIES MAY AGREE UPON AT THE TIME. THE ARBITRATOR SHALL BE BOUND BY AND SHALL STRICTLY ENFORCE THE TERMS OF THIS AGREEMENT AND MAY NOT LIMIT, EXPAND OR OTHERWISE MODIFY ITS TERMS.

THE PARTIES SUBMIT THAT THIS AGREEMENT AFFECTS INTERSTATE COMMERCE AND THAT THIS ARBITRATION CLAUSE SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT TO THE MAXIMUM EXTENT PERMISSIBLE UNDER LAW. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

16. Limitation of Liability. SEALEVEL'S AGGREGATE LIABILITY TO CUSTOMER SHALL NOT EXCEED THE AGGREGATE SUM OF ALL AMOUNTS PAID BY CUSTOMER TO SEALEVEL UNDER THIS AGREEMENT. IN NO CIRCUMSTANCE SHALL SEALEVEL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SEALEVEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS

SECTION IS A MATERIAL INDUCEMENT FOR SEALEVEL TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

- 17. Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of conflicts of law. Subject to the provisions of Section 14 above, venue for any legal action arising out of or relating to this Agreement shall be exclusively in the State or Federal courts located in Greenville, South Carolina. The Parties hereby consent to the jurisdiction of such courts.
- 18. Relationship of the Parties.** Each Party is an independent contractor and not the agent or employee of the other Party. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship or subject the Parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein.
- 19. Order of Precedence.** Unless otherwise agreed upon by the Parties, any conflict or inconsistency between the terms of this Agreement, a Purchase Order, and an Invoice will be resolved by giving precedence to those documents in the following order, with the document to be given greatest precedence listed first: (i) this Agreement; (ii) a Purchase Order; (iii) an Invoice.
- 20. Laws and Regulations.** The Product shall comply with all applicable safety and governmental regulations in effect at the time of delivery. Each Party shall comply with all applicable laws and regulations in the performance of its obligations hereunder.
- 21. Amendments.** No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each Party.
- 22. Counterparts.** This Agreement may be executed by each of the Parties hereto in separate counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.
- 23. Waiver.** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the Party claimed to have waived or consented. Any waiver of a breach by the other shall not constitute a consent to or waiver of any other subsequent breach.
- 24. Assignment.** Neither Party shall assign this Agreement or any of its rights hereunder, nor shall Customer subcontract any substantial portion of this Agreement, without the prior written consent of the other Party; provided, however, that any Party may, without such consent, assign this Agreement in connection with the transfer or sale of all or substantially all of its business, or in the event of its merger, consolidation, change in control or other similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment or transfer in violation of this Section shall be void.

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25. Notice. All notices shall be in writing and deemed duly given if delivered personally, one day after deposit for signature-confirmed delivery with a national overnight delivery service, or three (3) days after mailing, if sent registered or certified mail to the following address:

(a) If to Sealevel:

Sealevel Systems, Inc.
2779 Greenville Highway
P.O. Box 830
Liberty, South Carolina 29657
Attn: Ben O'Hanlan

With a copy to:

Nelson Mullins Riley & Scarborough LLP
104 S. Main Street, Suite 900
Greenville, South Carolina 29601
Attn: John M. Campbell, Jr., Esq.

(b) If to Customer:

CreatiVasc Medical, Inc.
300 East Coffee Street
Greenville, SC 29601
Attn: Steve Johnson

With a copy to: Womble Carlyle Sandridge & Rice

550 South Main Street, Suite 400
Greenville, SC 29601
Attn: Matt Latrick

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26. Entire Agreement. This Agreement, and any Purchase Orders and Invoices entered into by the Parties pursuant hereto, and the Warranty, represent the entire agreement between the Parties with respect to the purchase and sale of the Product. All prior or contemporaneous agreements, representations, statements, negotiations and undertakings with respect to the subject matter hereto, whether oral or written, are superseded.

Execution Page to Follow

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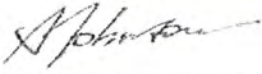
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EXECUTION PAGE OF CUSTOMER SUPPLY AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

CreatiVasc Medical, Inc.

By: 
Steve Johnson
Chief Executive Officer

SEALEVEL SYSTEMS, INC.

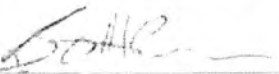
By: 
Ben O'Hanlan
President

Exhibit A
Specifications

See attached.

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Exhibit B
Form of Purchase Order

See attached.

DEFS 000066

ROA 748

Exhibit C
[Form of Invoice]

See attached

DEFS 000067

ROA 749

Exhibit D
Form of Quotation

See attached.

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Exhibit E
Warranty

Lifetime Warranty

Sealevel's commitment to providing the best I/O solutions is reflected in the Lifetime Warranty that is standard on all Sealevel manufactured I/O products. We are able to offer this warranty due to our control of manufacturing quality and the historically high reliability of our products in the field. For Relio™ and SeaPAC™ industrial computing products, please refer to the product specifications for warranty information. Sealevel products are designed and manufactured at its Liberty, South Carolina facility, allowing direct control over product development, production, burn-in and testing. Sealevel achieved ISO-9001:2000 certification in 2002.

Warranty Policy

Sealevel warrants that the Product shall conform to and perform in accordance with published technical specifications and shall be free of defects in materials and workmanship for the warranty period. In the event of failure, Sealevel will repair or replace the product at Sealevel's sole discretion. Failures resulting from misapplication or misuse of the Product, failure to adhere to any specifications or instructions, or failure resulting from neglect, abuse, accidents, or acts of nature are not covered under this warranty.

Warranty service may be obtained by delivering the Product to Sealevel and providing proof of purchase. Customer agrees to insure the Product or assume the risk of loss or damage in transit, to prepay shipping charges to Sealevel, and to use the original shipping container or equivalent. Warranty is valid only for original purchaser and is not transferable.

This warranty applies to Sealevel manufactured Product. Product purchased through Sealevel but manufactured by a third party will retain the original manufacturer's warranty.

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EXHIBIT 5



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Agreement

This Agreement ("Agreement") is entered into by ATEX Technologies, Inc. ("ATEX") and CreatiVasc Medical, Inc. ("CVM"), effective as of February 18, 2015 ("Effective Date"). This Agreement sets forth the principal terms on which ATEX will develop, manufacture and sell certain components to CVM.

Subject	Terms and Conditions
1. Description	ATEX will develop, manufacture, and assemble the Internal Balloon Valve Component of the Hemoaccess Valve System.
2. Development Economics	In consideration for ATEX's development of the Internal Balloon Valve Component pursuant to specification number 4197.06 SEC Rev IN, CVM agrees to pay ATEX the sum of \$100,000. \$30,000 will be paid upon the signing of this Agreement, \$30,000 will be paid when twenty (20) test prototypes of the Internal Balloon Valve Component are provided to CVM and \$40,000 will be paid six (6) weeks after twenty (20) test prototypes have met the specifications and close off blood pressure up to 250mm Hg for an equivalent use period of seven (7) years (such period determined by CVM by means of accelerated age testing), it being understood and agreed to by CVM that in order for ATEX to meet the foregoing CVM must supply ATEX with a balloon component that enables ATEX to meet such specification and close off the blood pressure at such requirement. In the event that the acquisition of CVM by Brookhaven Medical, Inc. does not occur on or before February 15, 2015, CVM and ATEX will review in good faith the adequacy of the development costs to be paid to ATEX and revise the same.
3. Commercial Economics	CVM agrees to the price range for the Internal Balloon Valve Component at current specification 4197.06, \$250 to \$290 each unit.
4. Payment Terms	Net 30 days.
5. Forecast/Orders	CVM agrees to provide a 12 month rolling unit forecast, updated quarterly. The first 4 months of each forecast update will be binding.
6. Exclusivity/Requirements	CVM agrees to purchase 100% of its Internal Balloon Valve Component requirements from ATEX including any future component additions and/or line extensions. If any future generation of the Hemoaccess Valve System is redesigned, CVM agrees ATEX will supply the components unless ATEX is unwilling or unable to supply such components. CVM agrees to provide annually to ATEX third party certification that it complies with the requirements.
7. Supply Chain	CVM agrees to purchase, inspect, and provide ATEX with valve balloons and connective fill tubes 100% of which meet CVM's specifications and that enable ATEX to meet the Internal Balloon Valve Component specification and close off blood pressure up to 250mm Hg.
8. Quality	ATEX will develop, manufacture, and assemble Internal Balloon Valve Component

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	according to CVM's specifications. Internal Balloon Valve Component will be developed, manufactured, and assembled under ATEX' Quality Management System. ATEX will notify CVM of any changes to suppliers of raw materials, location of manufacture, or changes that may have a material impact to the process to assemble and/or manufacture the Internal Balloon Valve Component.
9. Inspection	Visual Inspection Criteria for the Internal Balloon Valve Component will be developed and agreed to by CVM and ATEX. CVM agrees to inspect Internal Balloon Valve Components and to notify ATEX of any non-conforming Internal Balloon Valve Components within 90 days of receipt.
10. Regulatory	CVM is responsible for obtaining and maintaining all required regulatory approvals.
11. Intellectual Property	CVM owns and will own all intellectual property rights to the design and specifications of the Internal Balloon Valve Component, with the exception of the following. ATEX owns and will own all intellectual property rights related to: the textile material construction of the Internal Balloon Valve Component textile components (including all future textile component additions) including: knitting, weaving, braiding, fabrication, manufacturing, assembly or processing technology used to develop, manufacture, and/or assemble; and the material and fabrication, manufacturing, assembly and/or processing to develop, manufacture, and/or assemble the components of the Internal Balloon Valve Component including all future component additions and line extensions. ATEX agrees not to manufacture an internal balloon valve component for an entity which has a device that would compete with the Hemoaccess Valve System in the fields of dialysis or vascular access for a period of 5 years from the Effective Date and for each consecutive year thereafter immediately following the 5 year period that CreatiVasc purchases a minimum of \$1 million of Internal Balloon Valve Components from ATEX.
12. Confidential Information	Confidentiality will be governed by the Nondisclosure/Confidentiality Agreement between CVM and ATEX dated May 30, 2013, as amended (the "Confidentiality Agreement"). This Agreement is considered Confidential Information.
13. Warranty	ATEX warrants that the Internal Balloon Valve Components will meet the specifications, be free from defects in material, workmanship and manufacture; and be manufactured in accordance with ISO 13485:2003 standards and all laws applicable to ATEX (all except for components supplied by or on behalf of CVM). Except as stated in the previous sentence, ATEX disclaims any express or implied warranties of merchantability, fitness for a particular purpose and non-infringement of any third party intellectual property rights with respect to the Internal Balloon

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	Valve Component. The foregoing warranties expire on the earliest of: the date following the 90 day inspection period (such period beginning on the date of receipt) or the date Internal Balloon Valve Component has been further processed, incorporated into, sold or otherwise distributed. CVM exclusive remedy for a non-conforming Internal Balloon Valve Component is for ATEX to repair or replace the same. CVM warrants to ATEX that components supplied by or on behalf of CVM will be free from defects in material, workmanship and manufacture and will meet the then-current specifications.
14. Insurance	ATEX shall pay for its own products-completed operations liability insurance coverage of at least \$5 Million per occurrence. CVM shall pay for its own products-completed operations liability insurance coverage of at least: \$ 2 Million per occurrence upon the Effective Date continuing until the earlier to occur of the date enrollment begins for patients to participate in a human clinical trial or actual use in a human being ("Human Use Event"), \$5 Million per occurrence prior to a Human Use Event up to the date of first commercial sale, \$10 Million per occurrence upon the date of first commercial sale through \$50 Million in commercial sales, \$20 Million per occurrence over \$50 Million in commercial sales through \$250 Million in commercial sales, and \$20 Million per occurrence over \$250 Million in commercial sales; and in each case shall cause ATEX to be named as an additional insured. CVM will purchase and maintain the foregoing insurance coverage for a period of at least five (5) years following the termination or expiration of the Agreement, provided that a tail coverage policy is available from the existing insurance carrier or from an alternative carrier in the standard commercial insurance marketplace at pricing that is no more than 200% of the annual premium for the most recently effected annual policy term with similar terms and conditions as exist for the last policy year. For clarification, for the years following the expiration or termination of the Agreement, the minimum coverage shall be the aforementioned dollar amount corresponding to the greatest commercial sales during the term of the Agreement. For purposes of this Section "per occurrence" shall mean an accident, including continuous or repeated exposure to substantially the same general harmful condition.
15. Indemnification	ATEX shall indemnify CVM from and against claims (including reasonable legal fees and expenses) resulting from or arising out of: • Failure of ATEX to manufacture to specifications. • ATEX' gross negligence. • Failure by ATEX to comply with laws applicable to ATEX., each except to the extent of CVM's indemnification responsibilities set forth below. CVM shall indemnify ATEX from and against allegations and claims (including

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	reasonable legal fees and expenses) resulting from or arising out of: • The development, design, assembly, manufacturing, distribution, transport, use or sale of any Hemoaccess Valve System including any defect or failure of it including its design, materials, components, and Internal Balloon Valve Component; except to the extent caused by ATEX' failure to manufacture to specifications, ATEX' gross negligence or ATEX' failure to comply with laws applicable to ATEX. • Claims of personal injury, death, or damage to property relating to Hemoaccess Valve System; except to the extent caused by ATEX' failure to manufacture to specifications, ATEX' gross negligence or ATEX' failure to comply with laws applicable to ATEX. • Infringement of any intellectual property rights resulting from the development, design, assembly, manufacturing, use or sale of the Hemoaccess Valve System, (including the Internal Balloon Valve Component, and components supplied by or on behalf of CVM). • Acts or omissions of CVM, including negligence or willful misconduct of CVM. • Any remedial action by any governmental entity. • Failure by CVM to comply with applicable laws. • Any material breach by CVM of its obligations to ATEX. CVM shall promptly pay ATEX for any costs and expenses including any legal fees as a result of ATEX or ATEX indemnitee's participation in an investigation and/or litigation associated with any claims brought against CVM or ATEX whether or not ATEX is named as a party to the investigation or litigation, except to the extent such litigation or investigation relates to matters for which ATEX has indemnification obligations.
16. Limitation on Liability	Except pursuant to Section 15, neither CVM nor ATEX will be liable to the other for any consequential or incidental damages. ATEX' liability for any and all claims or disputes arising under the Agreement will not exceed the dollar amount actually received from CVM during the previous 12 month period.
17. Assignment	This Agreement must be assigned by CVM or ATEX in connection with the sale of all or substantially all of the company's (or in the case of CVM, its parent's) assets or stock, by merger, acquisition or otherwise to which the Agreement relates or in connection with the transfer or license of all or substantially all of its business to which the Agreement relates (any other assignment must be agreed to in writing). The successor entity or licensee of CVM, or if applicable, its parent, expressly assumes all obligations of CVM set forth in this Agreement (including to purchase 100% of requirements from ATEX pursuant to Section 6 hereof). This Agreement is binding to such required and permitted CVM and ATEX successors, licensees and assigns. For the avoidance of doubt, if CVM or its affiliates licenses the technology of the Hemoaccess Valve System such agreement(s) shall include the requirement that each licensee purchase 100% of requirements from ATEX pursuant to Section 6 hereof.
18. Term	Term of this Agreement is effective as of the Effective Date and continuing through

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15 years after FDA approval of the Hemoaccess Valve System. Sections 2, 11, 12, 13, 14, 15, 16, 17, 20, and 21 shall survive the expiration or termination of this Agreement.

19. Termination ATEX and CVM have the right to terminate this Agreement if the other materially breaches its obligations and fails to cure within 30 days of receipt of written notice.

In the event of serious adverse event reports filed by CVM with the FDA or other regulatory body, ATEX reserves the right to terminate the Agreement if a solution is not found and agreed upon to rectify the issue(s).

20. Governing Law State of North Carolina.

21. Entire Agreement

This Agreement and the Confidentiality Agreement constitute the entire understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements or understandings, whether written or oral, with respect to this subject matter. No amendments or modifications of this Agreement will be binding on the parties unless in writing and signed by all of the parties. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be removed from this Agreement and the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions of the Agreement will not be affected. The waiver by any party of a breach of any provision of this Agreement will not be construed as a waiver of a subsequent breach of the same provision by that party or the breach of any other provision of this Agreement. In the event of a conflict or inconsistency between this Agreement and any purchase order, the terms of this Agreement shall govern. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the first date written above.

ATEX Technologies, Inc.

CreatiVasc Medical, Inc.

Name

Name

Title

Title

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	15 years after FDA approval of the Hemoaccess Valve System. Sections 2, 11, 12, 13, 14, 15, 16, 17, 20, and 21 shall survive the expiration or termination of this Agreement.
19. Termination	ATEX and CVM have the right to terminate this Agreement if the other materially breaches its obligations and fails to cure within 30 days of receipt of written notice. In the event of serious adverse event reports filed by CVM with the FDA or other regulatory body, ATEX reserves the right to terminate the Agreement if a solution is not found and agreed upon to rectify the issue(s).
20. Governing Law	State of North Carolina.
21. Entire Agreement	This Agreement and the Confidentiality Agreement constitute the entire understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements or understandings, whether written or oral, with respect to this subject matter. No amendments or modifications of this Agreement will be binding on the parties unless in writing and signed by all of the parties. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be removed from this Agreement and the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions of the Agreement will not be affected. The waiver by any party of a breach of any provision of this Agreement will not be construed as a waiver of a subsequent breach of the same provision by that party or the breach of any other provision of this Agreement. In the event of a conflict or inconsistency between this Agreement and any purchase order, the terms of this Agreement shall govern. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the first date written above.

ATEX Technologies, Inc.

CreatiVasc Medical, Inc.

Name: _____

Name: Steve Johnson

Title: _____

Title: President & CEO

EXHIBIT 6



From: Tom O'Hanlan
Sent: Wed, 4 Mar 2015 01:45:13 +0000
To: sjohnson@creativasc.com
Subject: Re: I am in Georgia

Thanks- it was great. Glad all went well--

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

> On Mar 3, 2015, at 1:05 PM, "sjohnson@creativasc.com" <sjohnson@creativasc.com> wrote:

>
> We had a great meeting with the crew this morning/ They are on it - and we
> got a handheld to take with us to Atex in NC tonight. Tri-Tech will likely
> have a pumping prototypes by late this afternoon...so by the end of the
> week, we may have a working internal and external device (no pressure
> sensing of course yet).

>
> Great work - and glad they surprised the be-jeezus out of you!! You deserve
> it!

>
> SJ

>
>
> This message and any files transmitted within are intended solely for the
> addressee or its representative and may contain company sensitive
> information. If you are not the intended recipient, notify the sender
> immediately and delete this message. Publication, reproduction, forwarding,
> or content disclosure is prohibited without the consent of the original
> sender and may be unlawful.

>
>
> -----Original Message-----

> From: Tom O'Hanlan (<mailto:tboh@sealevel.com>)

> Sent: Monday, March 02, 2015 9:23 PM

> To: Steven Johnson

> Subject: I am in Georgia

>
> Steve,

> I had a big (surprise) birthday bash this past weekend. I booked your
> meeting not knowing I wouldn't be back on Tuesday. Tony, Earle and Jeff have
> plenty to share. I'm sorry I didn't tell you sooner.
> If you have any concerns, call me. I'll be back Tuesday afternoon.
> Thank you-

>
> Tom O'Hanlan
> CEO
> Sealevel Systems Inc.
> www.sealevel.com
> 864-843-4343

>
> Confidentiality Notice This message is intended exclusively for the
> individual or entity to which it is addressed. This communication may
> contain information that is PROPRIETARY, TRADE SECRET, PRIVILEGED,
> CONFIDENTIAL or otherwise legally exempt from disclosure. If you are not the
> named addressee, you are not authorized to read, print, retain, copy or
> disseminate this message or any part of it. If you have received this
> message in error, please notify the sender immediately either by phone
> (864.843.4343) or reply to this e-mail and delete all copies of this
> message.
>

EXHIBIT 8



From: Steve Johnson
Sent: Wed, 28 Oct 2015 01:32:55 +0000
To: 'Frank Patterson (pattersonfv@gmail.com)'; Lindsey Sanders; David Nichols; Charles Cox; charlie.jacobs@fmxi.net; Brian McMurray (BrianMcMurray@atextechnologies.com); John Druga; MarkJessup@atextechnologies.com; Michelle Wallach (MWALLACH@ATEXTECHNOLOGIES.COM); Tom O'Hanlan; tom.hogge@screwmatix.com; Antonio Martin; ben.strawn@screwmatix.com; StephanieNorris@atextechnologies.com; Michael Bhagchandani; Jeff Hunter
Cc: 'David Cull'; 'John Feltman'; 'Hugh Trout (hht trout@gmail.com)'
Subject: DR TROUT COMING TO CREATIVASC SUPPLIER MEETING NEXT WEEK
Importance: High
Categories: CreatiVasc

Next Wednesday, we have scheduled a meeting of all suppliers of the critical components for the HVS Gen 2 system. This is the first time that all of you who have played such a critical role in creating this outstanding technology have come together in one place. Thanks to each of you for making this happen.

I am pleased to tell you that Dr. Hugh Trout who has been with Dr. Cull, Frank Patterson and me (actually long before I came on the scene) has volunteered to come down from DC for our meeting to provide you his perspective on the work you are doing and the potential for this device. I am hoping that Dr. Cull can join us for part of the gathering either Tuesday night or stop in on Wednesday. Dr. Trout conducted our last implant at Johns Hopkins and has been a key to our ongoing interaction with the FDA. He will also provide a valuable clinical perspective to every component of the Gen 2 system.

I look forward to seeing each of you next week. Please make every effort to come in on Tuesday and stay through late afternoon on Wednesday.

Thank you for your insight, creativity and dedication to this project...

Steve



Steve Johnson
President & CEO
200 Patewood Drive, Building C, Suite 400
Greenville, SC 29615
864-242-4700 • Cell: 864-380-8885

ROA 763

EXHIBIT 9



From: Tom O'Hanlan
Sent: Wed, 7 Jun 2017 22:18:13 +0000
To: Ben O'Hanlan
Subject: Fwd: WHAT A DAY!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

Begin forwarded message:

From: Steve Johnson <sjohnson@creativasc.com>
Date: November 5, 2015 at 9:29:10 AM EST
To: Tom O'Hanlan <thoh@sealevel.com>, Jeff Hunter <jeff.hunter@sealevel.com>, Antonio Martin <tony.martin@sealevel.com>, "tom.hogge@screwmaties.com" <tom.hogge@screwmaties.com>, "ben.strawn@screwmaties.com" <ben.strawn@screwmaties.com>, "billy.hogge@screwmaties.com" <billy.hogge@screwmaties.com>, David Nichols <david.nichols@finxi.net>, Charles Cox <charles.cox@finxi.net>, "charlie.jacobs@finxi.net" <charlie.jacobs@finxi.net>, "michaelkbrand@gmail.com" <michaelkbrand@gmail.com>, "Brian McMurray (BrianMcMurray@atexttechnologies.com)" <BrianMcMurray@atexttechnologies.com>, John Druga <JohnDruga@atexttechnologies.com>, "StephanieNorris@atexttechnologies.com" <StephanieNorris@atexttechnologies.com>, "Michelle Wallach (MWALLACH@ATEXTECHNOLOGIES.COM)" <MWALLACH@ATEXTECHNOLOGIES.COM>, "MarkJessup@atexttechnologies.com" <MarkJessup@atexttechnologies.com>, "Hugh Trout (hhtrout@gmail.com)" <hhtrout@gmail.com>
Cc: 'John Feltman' <johndfeltman@gmail.com>, Frank Patterson <fpatterson@creativasc.com>, Lindsey Sanders <lsanders@creativasc.com>, 'David Cull' <dcull@ghs.org>
Subject: WHAT A DAY!

I just wanted to thank each of you for making the commitment to come to the CreatiVasc "Technology Summit" in Greenville. Yesterday was nothing short of magic. It was thrilling for us to see everyone who has made such contributions, sacrifices and commitments to making the Hemoaccess Valve System® Generation 2 device the elegant and effective device it is. I was thrilled with the team that was assembled in the "fish bowl" conference room yesterday. It was as if you had worked together and known each other for years.

John Feltman said last night that if that team could have been assembled 150 years ago, the South would have won the war!

Thank you again for what you are doing. As Hugh Trout said: "This is nothing short of transformational."

Steve



Steve Johnson
President & CEO
200 Patewood Drive, Building C, Suite 400
Greenville, SC 29615
864-242-4700 • Cell: 864-380-8885

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ROA 766

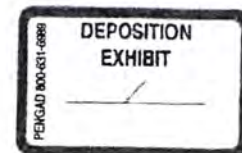
EXHIBIT 11





Prepared By Lindsey K Sanders, PhD	Document Number CVM-REQ-H1501	
Department Engineering	Date Feb 15, 2016	Rev A

REQUIREMENT SPECIFICATIONS FOR HVS HANDHELD



1. OVERVIEW

1.1 Purpose

This document provides the design requirements for the Hemoaccess Valve System (HVS) Handheld.

1.2 Scope

The requirements are for the general specifications of the HVS Handheld (HVS-H) for pre-clinical and clinical testing needed for FDA clearance. The HVS-H will be used by dialysis technicians to actuate a subcutaneous pump (HVS-P) before and after a hemodialysis session. The HVS-H functions to magnetically couple to and spin the gear pump mechanism within the HVS-P. The HVS-P generates positive and negative hydraulic pressure (Saline solution) through for the purpose of inflating and deflating two balloons valves (HVS-BV). With the HVS-H magnetically coupled to the HVS-P, saline is pressurized to inflate the two HVS BV which shuts off blood flow to an arteriovenous (AV) graft. At the beginning of hemodialysis, the HVS-H generates negative pressure thereby removing saline from the two HVS Balloons to allow flow of blood through the AV graft thereby facilitating hemodialysis. The surgeon will also use the HVS-H during implantation of the HVS-P. A sterile sleeve will cover the HVS-P during surgery.

2. Requirements

2.1 General

- 2.1.1 HVS-H must be designed to be handled by a small hand, i.e. one handed operation.
- 2.1.2 HVS-H must pass applicable electrical leakage and interference regulatory standards.
- 2.1.3 HVS-H must contain magnets, motor, and battery.
- 2.1.4 HVS-H must magnetically couple with the HVS Implantable Pump up to 2cm of magnet to magnet gap.
- 2.1.5 HVS-H must drive gears of HVS Implantable Pump to at least 15 PSI regardless of magnet to magnet gap.

SEALEVEL_02500

- 2.1.6 HVS-H must be able to recharge its internal energy source without breaking the seal of the Handheld.
- 2.1.7 HVS-H operational period of pump shall not exceed 30 sec.
- 2.1.8 HVS-H must be capable of a minimum 15 mins of continuous operation of the motor drive with no-load.
- 2.2 Magnets
 - 2.2.1 CreatiVasc Medical will supply all magnets and magnet holder for HVS-H.
 - 2.2.2 Space on motor shaft for magnet holder shall be adjustable (room for 3mm or 6mm height of magnets) for single or double layer of magnets.
- 2.3 Motor
 - 2.3.1 HVS-H motor must be small to fit inside of handheld casing.
 - 2.3.2 Motor speed control shall provide capability of variable test speeds as low as 5 RPM and as high as 3000 RPM.
 - 2.3.3 Motor speed control may be set using "hidden" mechanism.
 - 2.3.4 Motor shall stop when there is a measurable resistance to rotate. This resistance simulates balloons are fully inflated or deflated.
 - 2.3.5 Potential off the shelf motor: EC 32 Flat, 32 mm diameter, brushless, 6 Watt.
- 2.4 Power Source
 - 2.4.1 HVS-H shall operate from battery power.
 - 2.4.2 HVS-H battery shall not be lithium.
 - 2.4.3 Battery shall be rechargeable.
 - 2.4.4 Battery may be charged by a wired charger (no charging base) compatible with 10V charging source.
 - 2.4.5 Battery charger shall recharge battery to 80% capacity within 3 hr.
 - 2.4.6 Battery charging port must be sealed while not in use for protection against fluids.
 - 2.4.7 Battery shall provide 25 mins of motor rotation with no-load.
 - 2.4.8 Battery shall hold charge for 8 hr (including 1 hr of full operation).
- 2.5 Future Hardware Options – Not needed now
 - 2.5.1 Wireless charging base.
 - 2.5.2 External read-out(s) to provide users pump indications.
 - 2.5.3 Pressure sensor.
 - 2.5.4 Near Field Communications (NFC) chip
 - 2.5.5 Implantable Electronics.
 - 2.5.6 Bleach solution tolerant.
 - 2.5.7 Industrial design inputs focusing on ergonomics, drop testing and disinfecting.

3. References

Document Title
[1] EC 32 Flat, 32 mm diameter, brushless, 6 Watt Spec Sheet
[2] FDA ISO 60601 Standards (series 1-12)

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4. Revision History

Revision	Date	Revised By	Reason for Change
A	02/15/2016	L. Sanders	Initial version.

SEALEVEL_02502

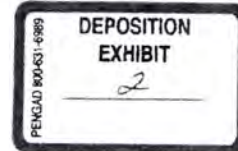
ROA 770

EXHIBIT 12



From: Lindsey Sanders
Sent: Fri, 19 Feb 2016 14:23:54 +0000
To: Antonio Martin
Cc: Steve Johnson; Frank Patterson; Chadd Clark
Subject: Re: CreatiVasc Project Requirements and Quote Request

Hi Tony,
We are meeting today to discuss your questions.
Thanks,
Lindsey



—
Lindsey K Sanders, PhD

From: Antonio Martin <tony.martin@sealevel.com>
Date: Tuesday, February 16, 2016 at 5:50 PM
To: Lindsey Sanders <lsanders@creativasc.com>
Cc: Steve Johnson <sjohnson@creativasc.com>, Frank Patterson <pattersonfv@gmail.com>, Chadd Clark <ccclark@creativasc.com>
Subject: RE: CreatiVasc Project Requirements and Quote Request

1. Charging specifically isn't the issue. It is energy density. 2.4.8 requires 1 hr. of loaded operation and enough energy to hold up for 8 hours. We believe we need more energy to do this. I say "believe" because the actual energy required is determined by the load when operating. This is determined by the magnetic strength and the torque required by the motor to drive the pump. Lithium batteries have the densest energy available. Other chemistries will require more space and will add weight. Unless for regulatory reasons you cannot use Lithium batteries, I would stick with them at least for these prototypes.
2. Thanks. We will print the housings in-house.
3. Does the general size of the HH today satisfy 2.1.1?
4. Can you elaborate on the regulatory standards that are applicable to the HH?
5. 2.1.6 mentions a seal. Can you elaborate on the type of sealing necessary for the prototype?
6. Will interchangeable magnet holders satisfy 2.2.2?
7. 2.3.1 mentions that the motor must be small. Is the current motor size considered small? If not, can you elaborate further on the size limits. The EC 32 is smaller, but can the HH size remain the same for the prototypes? We can still get experience with a smaller motor and reuse the current mounting brackets. If not, we will have to manufacture new motor brackets and do design work on the housing. That isn't a problem, but it does add cost and time.
8. 2.3.2 gives a range of RPMs for the motor. We also need to know the required torque. Motors are specified by speed and torque. This value is determined by the torque necessary to drive the pump. The EC 32 6W has about 0.9 oz.in of torque capacity. The current EC 45 motors are 8 oz.in. We currently have the EC 32 15W version in-house and it has 3 oz.in of torque. All of these can perform at the required speed.
9. 2.4.5 was originally specified with the previous charge requirements. This is likely OK using a wired charger, but wireless charging will be significantly longer for the predicted required energy.

That's all for now,
Tony

SEALEVEL_02496

From: Lindsey Sanders [<mailto:lsanders@creativasc.com>]
Sent: Tuesday, February 16, 2016 12:51 PM
To: Antonio Martin <tony.martin@sealevel.com>
Cc: Steve Johnson <sjohnson@creativasc.com>; Frank Patterson <pattersonfv@gmail.com>; Chadd Clark <cclark@creativasc.com>
Subject: Re: CreatiVasc Project Requirements and Quote Request

Tony,

- (1) Elimination of lithium battery – decreases electrical regulatory testing, this requirement is something we can talk about if there is an issue with changing
- (2) For the 6 prototypes, case material can be in-house 3D printed ABS plastic – we are currently looking into design firms to optimize the casing material and user interface

These 6 prototypes will be used for initial system functional testing. Please let me know if it will be helpful to discuss the requirements in more details.

Thank you,
Lindsey
—

Lindsey K Sanders, PhD

From: Antonio Martin <tony.martin@sealevel.com>
Date: Tuesday, February 16, 2016 at 12:41 PM
To: Lindsey Sanders <lsanders@creativasc.com>
Subject: RE: CreatiVasc Project Requirements and Quote Request

Lindsey, just out of curiosity, why the prohibition of the Lithium battery? Also, there is a preference of the case material? Is our in-house 3D printed ABS plastic in a random color OK?

From: Lindsey Sanders [<mailto:lsanders@creativasc.com>]
Sent: Tuesday, February 16, 2016 11:47 AM
To: Antonio Martin <tony.martin@sealevel.com>
Cc: Steve Johnson <sjohnson@creativasc.com>; Frank Patterson <pattersonfv@gmail.com>; Chadd Clark <cclark@creativasc.com>; Tom O'Hanlan <tboh@sealevel.com>; Earle Foster <earle.foster@sealevel.com>
Subject: CreatiVasc Project Requirements and Quote Request

Hi Tony,

Attached are project requirements for the CreatiVasc Handheld. Below are key changes from past productions of the HVS Handheld:

Changes:

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1. No charging base – Change to charging jack
2. No external user read-outs
3. No pressure sensors –

1. We do not want this component to delay a working handheld
2. CreatiVasc will lead the pressure sensor search, CreatiVasc will look to Sea Level for input

4. No NFC – not needed since we are not currently using pressure sensors

5. No implantable electronics - not needed since we are not currently using pressure sensors

We would like to receive a quote for production of 6 HVS Handheld prototypes. In the next couple of weeks, CreatiVasc will get you a few working pumps for testing the handheld at Sea Level. Are you available for a call this week to discuss the project?

Thank you,
Lindsey

Lindsey K Sanders, PhD
Director of Technology and Commercialization
CreatiVasc Medical Inc.
Brookhaven Medical Inc.

200C Patewood Drive
Office 4127
Greenville, South Carolina 29615
864.242.4700 (o) 864.271.0557 (f)
843.251.3959 (c)



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ROA 774

EXHIBIT 13



SECOND AMENDMENT TO
CUSTOMER SUPPLY AGREEMENT



This Second Amendment ("Amendment") to the October 28, 2014 Customer Supply Agreement between Sealevel Systems, Inc. ("Sealevel") and CreaTIVasc Medical, Inc. ("Customer") (the "Agreement") is made between the parties and is effective as of March 9, 2016.

NOW, THEREFORE, in consideration of the agreements herein and for other good and valuable consideration, the receipt of sufficiency which is hereby acknowledged, Sealevel and Customer hereby agree as follows:

Section 6 of the Agreement is hereby amended to add new Section 6(c) in the existing provisions to Section 6:

6(c) Pending System Patent Applications. The provisions of Sections 6(a) and 6(b) of the Agreement, as added per the amendment of April 10, 2015, shall not apply to U.S. Patent Application No. 14,695,241 filed on April 24, 2015 (the "US System Application") and International Patent Application No. PCT/US2015/027418 filed on April 24, 2015 (the "PCT System Application") (collectively referred to as the "System Applications"), both of which are entitled "Magnetically Activated Arteriovenous Access System and Related Methods" and are directed to various aspects related to Customer's System (as previously defined in the Agreement). Customer agrees to cancel any claim(s) contained in the US System Application directed to subject matter contributed by an employee of Sealevel (i.e., remotely powering a sensor communications device using near field communications (NFC)) ("Sealevel Contribution"). Customer agrees to cancel any claim(s) contained in the PCT System Application directed to the Sealevel Contribution at the time of nationalizing such application into any non-US jurisdictions. To the extent necessary to correct inventorship upon cancelling any claim(s) directed to the Sealevel Contribution, Sealevel agrees to assist Customer in obtaining executed documents from any named inventor associated with Sealevel. Customer agrees not to file any future claims directed to the Sealevel Contribution without express written consent from Sealevel. Customer shall be the sole owner of the System Applications and of any patents deriving therefrom (including in the United States and any foreign countries) and shall have the right to file continuations, divisionals, reissue applications, and other related applications claiming priority to the System Applications to the extent that such related applications do not include claims directed to the Sealevel Contribution. Subject to the Customer Supply Agreement, Customer shall also be entitled to license, sell, offer for sale, make, or otherwise use the System described in the System Applications, as well as enforce any patents deriving from the System Applications, freely and without any restriction.

(signature page to follow)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed
by their respective duly authorized representatives as of the Effective Date.

1200 Vaw Mediant, Inc.

By: 
Steve Johnson
Chief Executive Officer

1200 Vaw Mediant, Inc.

By: 
Henry Hui
President

EXHIBIT 14



CONTRIBUTION AGREEMENT

This CONTRIBUTION AGREEMENT (this "**Agreement**") made effective as of December 30, 2016 (the "**Effective Date**") by and among BROOKHAVEN VASCULAR, INC., a South Carolina corporation (the "**Contributor**"), Brookhaven Medical, Inc., a Delaware corporation and the wholly-owning parent corporation of the Contributor ("**Brookhaven Medical**"), and DiaxaMed, LLC, a Delaware limited liability company (the "**Company**").

BACKGROUND STATEMENT

WHEREAS, the Contributor is in the business of researching, developing and commercializing vascular technology-based medical devices for the treatment of end stage renal diseases, particularly with respect to vascular access for dialysis patients (the "**Business**"); and

WHEREAS, the Contributor, Brookhaven Medical and ATEX Technologies, Inc., have agreed upon the terms of a joint venture, pursuant to which the Company has been formed to carry forward such business; and

WHEREAS, in furtherance of the joint venture, the Contributor wishes to contribute all of its intellectual property and other assets related to its HemoAccess Valve System, as more specifically described herein, in exchange for an equity interest in the Company; and

WHEREAS, the Company wishes to accept such contribution and issue such equity interest to the Contributor;

NOW, THEREFORE, in consideration of the above-recited consideration and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I CONTRIBUTION AND ISSUANCE

1.1 Contribution of Assets. In consideration of the Issued Units described in Section 1.4 below, on the terms and subject to the conditions of this Agreement, as of the Effective Date, the Contributor hereby contributes, conveys, assigns, transfers and delivers to the Company, free and clear of all liens and encumbrances, all of the assets, rights and properties owned, leased, licensed, used or useable by the Contributor in the Business, and all of its rights therein (the "**Contributed Assets**"), including without limitation those assets set forth on **Exhibit A**, and the Company hereby acquires and accepts the Contributed Assets from the Contributor. Further, the Contributor agrees to take, and, if necessary, shall cause its affiliates to take, all actions reasonably requested by Company to assist Company in effecting the foregoing transfer and in establishing, perfecting, defending, enforcing and protecting Company's rights in any of the above transferred items, including without limitation assisting in the prosecution of any applications, assignments or registrations included in or based upon the Company Proprietary Rights (including, without limitation, those patents, patent applications, trademarks and trademark applications set forth on **Exhibit A**). Company shall promptly reimburse Contributor for any out-of-pocket costs reasonably incurred by Contributor in providing such assistance, except to the extent the necessity or advisability of such assistance arises out of the Contributor's breach of a representation or warranty herein, or failure to comply with a specific covenant herein.

(a) **Contributed Patents and Know-How.** Contributor and Brookhaven Medical shall complete, execute and deliver an Assignment of Patents in the form attached hereto as **Exhibit B**, in

form suitable for filing with the U.S. Patent and Trademark Office and patent offices in the other applicable jurisdictions, with respect to those patents and patent applications included in the Contributed Assets. For the avoidance of doubt, Contributor is also hereby contributing, assigning and transferring all of its rights, title and interest in and to any know-how associated with the Business or with the use, development, manufacture or maintenance of any other Contributed Assets, regardless of whether it is specifically listed on **Exhibit A** hereto.

(b) **Contributed Trademarks.** Contributor and Brookhaven Medical shall complete, execute and deliver an Assignment of Trademarks in the form attached hereto as **Exhibit C**, in form suitable for filing with the U.S. Patent and Trademark Office, with respect to those trademarks and trademark applications included in the Contributed Assets.

(c) **Supply Agreement.** Contributor and Company shall execute, deliver and enter into that Assignment and Assumption of Supply Agreement with ATEX Technologies, Inc., in the form attached hereto as **Exhibit D**.

1.2 Confirmatory Assignment by Brookhaven Medical. As of the Effective Date, Brookhaven Medical hereby contributes, conveys, assigns, transfers and delivers to the Company, free and clear of all liens and encumbrances, any right, interest and/or title it may now or hereafter hold to the Contributed Assets, and any additional Proprietary Rights it may hold which are used or useful in the Business. Further, Brookhaven Medical agrees to take, and, if necessary, shall cause its affiliates to take, all actions reasonably requested by Company to assist Company in effecting the foregoing transfer and in establishing, perfecting, defending, enforcing and protecting Company's rights in any Contributed Assets or other assets transferred pursuant to this Section 1.2, including without limitation assisting in the prosecution of any applications, assignments or registrations included in or based upon the Proprietary Rights transferred to the Company hereby.

1.3 No Assumed Liabilities. The Company shall neither assume nor become liable for the payment or performance of any debts, obligations, responsibilities, contracts and liabilities of the Contributor relating to the Contributed Assets of any kind, character or description, whether accrued, absolute, contingent or otherwise, and whether known or unknown, except as expressly assumed under the Assignment and Assumption of Supply Agreement.

1.4 Issuance of Membership Interest. The Company hereby issues to the Contributor, and the Contributor hereby accepts, Seventeen Thousand Five Hundred (17,500) Class B Units of its Membership Interest (the "***Issued Units***"), subject to the Operating Agreement of the Company, which the Contributor is entering into as a Member simultaneously herewith.

1.5 Value of Contribution. The Contributor and the Company hereby agree that the reasonable fair market value of the assets being contributed by the Contributor to the Company is \$53,030, and that this amount shall constitute the initial capital account of the Contributor with respect to its ownership of the Company. The Company, the Contributor and Brookhaven Medical hereby agree to the valuation described in this Section 1.5, and each agrees that it shall not maintain any position on its respective U.S. federal income tax returns or otherwise that is inconsistent therewith.

1.6 Section 721. It is the intention of the Company and the Contributor that the issuance of the Issued Units by made pursuant hereto is intended to qualify for non-recognition treatment under Section 721 of the Internal Revenue Code of 1986, as amended. The Company, the Contributor and Brookhaven Medical hereby agree to the U.S. federal income tax treatment described in this Section 1.6, and each agrees that it shall not maintain any position on its respective U.S. federal income tax returns or otherwise that is inconsistent therewith.

ARTICLE II INSURANCE

2.1 Product Liability Insurance. Within thirty (30) days of the date of this Agreement, Brookhaven Medical and Contributor will cause their insurer(s) to add the Company as an additional insured on their products liability policy. Brookhaven Medical and Contributor will maintain the Company as an additional insured on such policies with coverage reasonably acceptable to the Company until the Company has commercially launched its first product for sale. In the event that Brookhaven Medical or Contributor fails to comply with this covenant, the Company may obtain its own products liability policy and Brookhaven Medical shall reimburse the Company for the premiums and other costs of obtaining such insurance. After the Company has commercially launched its first product for sale, it will be responsible for obtaining and paying for its own products liability insurance.

2.2 Clinical Trial Insurance. Brookhaven Medical shall also pay for the premiums and other costs of clinical trial insurance obtained by the Company for coverage until the Company has commercially launched its first product for sale. Brookhaven Medical will either pay such costs directly or reimburse the Company upon thirty days' notice that the Company has paid such costs. After the Company has commercially launched its first product for sale, the Company will be responsible for paying for any ongoing or future clinical trial insurance it may obtain.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Each of the Contributor and Brookhaven Medical, jointly and severally, hereby represent and warrant to the Company as follows, all of which shall survive the execution and delivery of this Agreement:

3.1 Authority. Each such party has the full right, power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder.

3.2 Enforceability. This Agreement constitutes the legal, valid and binding obligation of such party and is enforceable against such party in accordance with its terms, except as enforceability may be limited by equitable principles or by bankruptcy, fraudulent conveyance or insolvency laws affecting the enforcement of creditors' rights generally.

3.3 No Conflicts. Neither such party's execution and delivery of this Agreement, such party's consummation of the transactions contemplated hereby, nor the compliance by such party with any of the provisions hereof, will constitute a breach, default or violation of any agreement or other instrument or obligation to which such party is a party or is otherwise bound, or applicable law.

3.4 Title to Contributed Assets. The Contributor has good, valid and marketable title to all of the Contributed Assets, other than leased or licensed assets or properties, and holds valid leasehold and licensed interests in all of its leased and licensed assets and properties, in each case free and clear of all liens and encumbrances, other than with respect to leased or licensed properties or assets, the lessor's or licensor's interest, as applicable, in the property or asset. The Contributor does not own any real property.

3.5 Litigation. There is no claim, action, suit, proceeding, arbitration, complaint, charge or investigation pending or, to such party's knowledge, currently threatened against such party, the Company or the Contributed Assets nor, to the knowledge of the Contributor or Brookhaven Medical, does any state of facts exist under which it is reasonably possible that any claim, action, suit, proceeding,

arbitration, complaint, charge or investigation might be based. There is no action, suit, proceeding or investigation by such party pending or which such party intends to initiate relating in any way to the Contributed Assets.

3.6 Intellectual Property.

(a) The Contributor owns, free and clear of any mortgage, pledge, security interest, encumbrance, charge, or other lien, whether arising by contract or by operation of law, or has a valid right to use, all Contributor Proprietary Rights. As used in this Agreement, "**Contributor Proprietary Rights**" means all Proprietary Rights owned or licensed by the Contributor in its business as currently conducted, and "**Proprietary Rights**" means all (i) United States and non-United States patents and patent applications, and any divisional, continuation, continuation in part, reissue, renewal or re-examination patent issuing therefrom (including any foreign counterparts), (ii) copyrights and registrations thereof, (iii) mask works and registrations and applications for registration thereof, (iv) computer software, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (v) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (vi) trade secrets and other confidential business information, whether patentable or unpatentable and whether or not reduced to practice, know-how, technology, proprietary processes, techniques, methodologies, formulae, algorithms, models, user interfaces, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, inventions, source code, object code, and, with respect to all of the foregoing, related confidential documentation, (vii) trademarks, service marks, trade names, domain names and applications and registrations therefore, (viii) all documentation, including user manuals and training materials relating to any of the foregoing and descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing and, (ix) other proprietary rights relating to the foregoing. No other person or entity (other than licensors of Contributor Proprietary Rights or of software that is generally commercially available on similar terms to commercial licensees) has any rights to any of such Contributor Proprietary Rights and no other person or entity is infringing, violating or misappropriating any of such Contributor Proprietary Rights that the Contributor owns or to which it has obtained exclusive licenses; provided however, that the Contributor makes no representations regarding whether third parties may have independently developed trade secrets that are similar to those of the Contributor.

(b) None of the activities or business conducted by the Contributor infringes, violates or constitutes a misappropriation of (or in the past infringed, violated or constituted a misappropriation of) any Proprietary Rights of any other person or entity, other than the patent rights of any other person or entity which derive from patent applications that have not yet been published ("**Unpublished Patents**"). and with respect only to such Unpublished Patents, none of such activities or business conducted by the Contributor infringes (or in the past infringed) any Unpublished Patent rights of any other person or entity. The Contributor has not received any complaint, claim or written notice alleging any such infringement, violation or misappropriation, and there is no basis for any such complaint, claim or notice.

(c) **Exhibit A** identifies each (i) patent that has been issued, assigned or exclusively licensed to the Contributor, (ii) pending patent application filed on behalf of or assigned to the Contributor (or to which the Contributor has an exclusive license), (iii) copyright, trademark or service mark registration or application issued to or filed on behalf of the Contributor, (iv) domain name registration or application held by or filed on behalf of the Contributor, and (v) mask work registration or application issued to or filed on behalf of the Contributor.

(d) **Exhibit A** of the Disclosure Schedule identifies each agreement (other than employee and consultant agreements concerning assignment of inventions) with a third party pursuant to which the Contributor obtains rights to Proprietary Rights material to the business of the Contributor as currently conducted or as currently proposed to be conducted (other than software that is generally commercially available on similar terms to all commercial licensees) that are owned by a party other than the Contributor. Other than license fees for software that is generally commercially available on similar terms to all commercial licensees, the Contributor is not obligated to pay any royalties or other compensation to any third party in respect of its ownership, use or license of any Proprietary Rights used by the Contributor.

(e) The Contributor has taken commercially reasonable precautions and actions (i) to protect its rights in the Contributor Proprietary Rights and (ii) to maintain the confidentiality of its trade secrets, know-how and other confidential Proprietary Rights. There have been no acts or omissions by the officers, directors, stockholders, employees, independent contractors or other agents of the Contributor, which could materially compromise the rights of the Contributor in the Contributor Proprietary Rights, including without limitation the Company's ability, following contribution of such rights hereunder, to apply for or enforce appropriate legal protection of such Contributor Proprietary Rights.

(f) All Proprietary Rights owned by the Contributor either: (i) have been created by employees of the Contributor within the scope of their employment by the Contributor or by independent contractors of the Contributor, each of whom has executed agreements expressly assigning all right, title and interest in such Proprietary Rights to the Contributor; or (ii) if created by parties other than employees or independent contractors of the Contributor, have been validly assigned to the Contributor. No portion of Proprietary Rights owned by the Contributor was jointly developed with any third party who has not validly assigned all right, title and interest therein to Contributor. No other person or entity (including without limitation any prior employer of any employee of the Contributor) has any right to, or interest in, any of the Proprietary Rights owned by the Contributor that is material to the business of the Contributor as currently.

ARTICLE IV MISCELLANEOUS

4.1 Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior written and oral statements, including any prior representation, statement, condition or warranty.

4.2 Amendment. This Agreement may be amended only in writing and with the consent of the parties hereto.

4.3 Notices. All notices, consents, waivers and other communications required hereunder shall be in writing and shall be either delivered by hand, or mailed by registered or certified mail or by a nationally recognized overnight delivery service, postage prepaid, to a party at its address set forth on the signature page to this Agreement. Each such notice or other communication shall be deemed to have been duly given and to be effective (a) if delivered by hand, immediately upon delivery if delivered on a business day during normal business hours and, if otherwise, on the next business day, (b) if mailed, on the fourth business day following deposit in the United States mail, or (c) if sent by a nationally recognized overnight delivery service, on the day of delivery by such service or, if not a business day, on the first business day after delivery. Notices and other communications that are not required under this Agreement may be transmitted by any means, including e-mail.

4.4 **Further Assurances.** Each of the Contributor and Brookhaven Medical hereby agree to take whatever additional action and execute whatever additional documents that the Company may deem necessary or advisable in order to carry out or effect one or more of the obligations or restrictions imposed on either the Contributor, Brookhaven Medical or the Issued Units pursuant to the provisions of this Agreement.

4.5 **Governing Law.** This Agreement shall be governed by the internal laws and judicial decisions of the State of North Carolina, without reference to conflicts of laws principles.

4.6 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.7 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of, and be binding upon, each of the parties and its respective successors and assigns, including any other person who obtains any interest in the Issued Units. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

4.8 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

4.9 **Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party that may be injured (in addition to any other remedies which may be available to that party), shall be entitled to one or more preliminary or permanent orders (a) restraining and enjoining any act which would constitute a breach or (b) compelling the performance of any obligation which, if not performed, would constitute a breach.

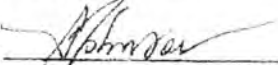
4.10 **Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

[signatures follow this page]

IN WITNESS WHEREOF, this Contribution Agreement is hereby executed the day and year first above written.

CONTRIBUTOR:

Brookhaven Vascular, Inc.

By: 
Name: Steve Johnson
Title: President & CEO

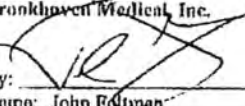
Address for Notice:



Attn: Steve Johnson

BROOKHAVEN MEDICAL:

Brookhaven Medical, Inc.

By: 
Name: John Foltman
Title: CEO

Address for Notice:

Monarch Tower
3424 Peachtree Road NE, Suite 1150
Atlanta, Georgia 30326
Attn: John Foltman

COMPANY:

DiaxaMed, LLC

By: DXM Holdings, LLC, its Manager

By:

Name: Brian Mc Murray

Title: Manager

Address for Notice:

3110 Edwards Mill Road, Suite 300
Raleigh, NC 27612

Attn: Fred D. Hutchison

fhutchison@hutchlaw.com

DEFS 000105

ROA 786

Exhibit A

Contributed Assets

Tools and Equipment:

All of the tools, equipment and other assets on the attached Brookhaven Vascular Asset Inventory.

Assigned Contracts:

Agreement between Contributor and ATEX Technologies, Inc., dated as of February 18, 2015.

Patents and Patent Applications:

Patent Applications

<i>Title</i>	<i>Country</i>	<i>Serial No.</i>	<i>Filing Date</i>
Arteriovenous Access Valve System and Process	US	11/807479	10/25/16
Arteriovenous Access Valve System and Process	US	14/340763	10/25/16
Arteriovenous Access Valve System and Process	US	14/346341	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	US	14/695241	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	AU	2015249561	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	BR	BR112016024688-8	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	CA	2,946,856	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	CN	PCT/US2015/027418	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	EP	PCT/US2015/027418	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	JP	Not yet provided	10/25/16
Magnetically Activated Arteriovenous Access Valve System and Related Methods	MX	MX/a/2016/013907	10/25/16
Arteriovenous Access Valve System and Process	US	14/938003	10/25/16

Issued Patents

<i>Title</i>	<i>Country</i>	<i>Patent No.</i>	<i>Issue Date</i>
Arteriovenous Access Valve System and Process	US	7,025,741	4/11/2006
Arteriovenous Access Valve System and Process	CA	2524008	1/24/2012
Arteriovenous Access Valve System and Process	US	8,114,044	2/14/2012
Arteriovenous Access Valve System and Process	CA	2579682	9/9/2014
Arteriovenous Access Valve System and Process	GB	2435428	7/5/2011
Arteriovenous Access Valve System and Process	GB	2418146	6/19/2007
Arteriovenous Access Valve System and Process	GB	2432324	2/5/2008
Device and Methods to Facilitate Cannulation of an Arteriovenous Fistula	US	8,211,056	7/3/2012
Arteriovenous Access Valve System and Process	US	8,764,698	7/1/2014
Arteriovenous Access Valve System and Process	US	8,790,288	7/29/2014

Tubing Attachment Tool and Methods of Using Same	US	8,578,589	11/12/2013
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Trademarks:

Registered Marks:

Mark	U.S. Serial No.	U.S. Reg. No.
HEMOACCESS VALVE SYSTEM	77/478116	3720250
HEMOACCESS VALVE SYSTEM	86/540550	4944136
...WHERE INNOVATION IS CIRCULATING	77/270916	3565496
CREATIVASC MEDICAL	78/711145	3573997
FISTULA FINDER	78/699733	3720403
FISTULA FINDER	86/540543	4925248

Unregistered Marks:

Websites/Phone Numbers:

Files:

Computer files located on the computer equipment and storage devices transferred hereunder.

Exhibit B
Assignment of Patents
{ See Attached }

Exhibit C
Assignment of Trademarks
{See Attached}

Exhibit D

Assignment and Assumption of Supply Agreement

{See Attached}

EXHIBIT 16



CONFIDENTIAL

(1) The geographic territory within which the Company was doing business during the twelve (12) month period immediately preceding the date of my separation from the Company for any reason;

(2) The geographic territory within which I was working on behalf of the Company on the date of my separation from the Company for any reason;

(3) The United States of America;

(4) Each state of the United States of America within which the Company was doing business during the twelve (12) month period immediately preceding the date of my separation from the Company;

(5) Each county (or similar political subdivision) in the United States in which was located any customer to which the Company sold any product, or for which the Company performed any service, at any time within two (2) years prior to the termination of my employment with the Company.

4.4 Reasonable. I agree and acknowledge that the above definitions of Restricted Business and Restricted Territory, combined with the Restricted Period, are reasonable. I also agree and acknowledge that this Section 4 is reasonably necessary for the protection of the Company's legitimate business interests.

4.5 Severability of Non-Compete Covenants. The promises I made in this Section 4 are independent and severable. Because the covenants are independent of any other provision in this Agreement or any other agreement I may have with the Company, the existence of any claim or cause of action I may have against the Company, whether arising from this Agreement or otherwise, shall not constitute a defense to the enforcement of the promises I made in this Section 4.

5. NON-DISPARAGEMENT. I will not make any disclosures, issue any statements or otherwise cause to be disclosed any information that is designed, intended or might reasonably be anticipated to disparage the Company, its officers or directors, its business, services, products and/or personnel. However, nothing in this Agreement is intended to limit in any way my right or ability to file a charge or claim with any government agency charged with the enforcement of any law, including the Equal Employment Opportunity Commission (the "EEOC"), the National Labor Relations Board, or comparable state or local agencies. Agencies like the EEOC have the authority to carry out their statutory

duties by investigating the charge, issuing a determination, filing a lawsuit in federal or state court in their own name, or taking any other action authorized under law.

6. NO CONFLICTING OBLIGATION. I represent that my performance of all the terms of this Agreement and my performance of my duties as an employee of the Company do not and will not breach any agreement regarding information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree that I will not enter into, any agreement, either written or oral, in conflict herewith.

7. RETURN OF COMPANY MATERIALS. At any time upon request of the Company and when I leave the employ of the Company, I will deliver to the Company, or, if delivery is impossible, certify to the destruction of any and all drawings, notes, extracts, summaries, photos, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Proprietary Information in whatever form such information is contained. In addition, I agree that at any time upon the request of the Company and when I leave the employ of the Company, I will either return to the Company or at its direction completely delete any virtual, cloud-based or other third-party backup devices or storage mechanisms that contain or contained any Company Inventions, Third Party Information or Proprietary Information.

8. RIGHT TO INSPECT/PERSONAL EQUIPMENT. I understand and agree that any property situated on the Company's premises and owned by the Company, including disks, storage media, computer data, computers, electronic devices, filing cabinets, or any work area, is subject to inspection by Company personnel at any time with or without notice, and I understand that I should have no expectation of privacy with regard to the same. I further understand and agree that I am not permitted to use my personal equipment (i.e., computer, laptop, cell phone, personal digital assistants, iPad, iPod or other similar digital or electronic device etc.) for the conduct of Company business.

9. LEGAL AND EQUITABLE REMEDIES. Because my services are personal and unique, because I will have access to and become acquainted with the Proprietary Information and because the Company would not have an adequate remedy at law for the breach or threatened breach of this

EXHIBIT 17



From: Tom O'Hanlan
Sent: Fri, 13 Jan 2017 00:21:23 +0000
To: Steve Johnson; Ben O'Hanlan
Cc: boh@sealevel.com
Subject: Re: GOT TIME TO TALK ON FRIDAY MORNING?
Attachments: image001.png

Steve- I'm open all afternoon--

Happy new year!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Jan 12, 2017, at 6:03 PM, Steve Johnson <sjohnson@creativasc.com> wrote:

Hi Tom and Ben --

You see a very strange name below my name. CreatiVasc and Brookhaven Vascular are no more. This is just the tip of the iceberg of changes that happened over the last several weeks. Would you have time tomorrow (Friday) to get together and talk? I could do it anytime until around 2PM because I have a 3PM meeting here in Greenville.

Let me know if this could work...

Thanks.

SJ

Steve Johnson

200C Patewood Drive, Suite 4125
Greenville, South Carolina 29615
864-242-4700 • 864-380-8885

<image001.png>

This message and any files transmitted within are intended solely for the addressee or its representative and may contain company sensitive information. If you are not the intended recipient, notify the sender immediately and delete this message. Publication, reproduction, forwarding, or content disclosure is prohibited without the consent of the original sender and may be unlawful.

DIA XAMED

ROA 796

EXHIBIT 21





June 28, 2017

Mr. Ben O'Hanlan
Sealevel Systems Incorporated
2779 Greenville Highway
PO Box 830
Liberty, SC 29657

Dear Mr. O'Hanlan:

I acknowledge receipt of your correspondence dated June 26, 2017 to me with Invoice No 150195 (the "Invoice") from Sealevel Systems Incorporated ("Sealevel"). Please be advised that Brookhaven Medical, Inc. ("Brookhaven") acquired all of the outstanding shares of CreatiVasc Medical, Inc. ("CreatiVasc") by merger effective March 5, 2015. While Brookhaven is the parent company of its wholly owned subsidiary that acquired CreatiVasc, Brookhaven did not and has not assumed any outstanding liabilities of the CreatiVasc entity that existed immediately prior to the merger. Moreover, CreatiVasc also denies any liability for the items set forth on the Invoice. It does not have a copy of any purported supply agreement supporting the Invoice. If in fact one exists, please send a copy to me.

After discussions with Steve Johnson, it is also apparent that Sealevel was unable to produce a working device capable of any commercialization.

Accordingly, please consider this correspondence as a complete denial of any liability of either Brookhaven or CreatiVasc for your Invoice.

Regards,

Robert E. Altenbach
General Counsel

cc: John M. Campbell, Esq.
Nelson, Mullins, Riley & Scarborough, LLP

Plaintiff's Exhibit 25



Subject: FW: Sealevel/CreatiVasc/Brookhaven/Diaxamed* [IWOV-imanage.FID230483]

From: Fred Hutchison <fhutchison@hutchlaw.com>
Sent: Friday, June 2, 2017 2:41 PM
To: John Campbell <john.campbell@nelsonmullins.com>
Cc: Nichole Hayden <nichole.hayden@nelsonmullins.com>
Subject: RE: Sealevel/CreatiVasc/Brookhaven/Diaxamed* [IWOV-imanage.FID230483]

John, our client closed on its asset purchase at the very end of December, and only bought assets and assumed one contract but did not assume any obligations to Sealevel.

I have spoken with the client and there is no interest in pursuing a business relationship with Sealevel.

If you client has any claims, they need to be against Brookhaven Vascular (fka CreatiVasc).

Best,

Fred

From: Patty Waters [<mailto:patty.waters@nelsonmullins.com>] **On Behalf Of** John Campbell
Sent: Thursday, June 1, 2017 4:26 PM
To: Fred Hutchison <fhutchison@hutchlaw.com>
Cc: Nichole Hayden <nichole.hayden@nelsonmullins.com>; John Campbell <john.campbell@nelsonmullins.com>
Subject: Re: Sealevel/CreatiVasc/Brookhaven/Diaxamed*

The most recent communication between Sealevel and CreatiVasc is attached. This is pretty close to when, we think, Diaxamed "purchased" CreatiVasc. Steve Johnson sent an email to Sealevel in early January under a Diaxamed signature label and Sealevel sales/engineering people had conversations with CreatiVasc personnel in early November 2016 about the production of new prototypes.

Fred, we are just trying to figure out what is going on here. This is just not adding up for us. When did Steve Johnson tell you that the Sealevel supply agreement had been terminated?

John

Nelson Mullins

John M. Campbell, Jr.

Partner

john.campbell@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Poinsett Plaza, Suite 900

104 South Main Street, Greenville, SC 29601

Tel: 864.250.2234 Fax: 864.232.2925

www.nelsonmullins.com
(View Bio)

Confidentiality Notice

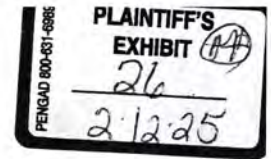
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

Plaintiff's Exhibit 26

SEALEVEL

SYSTEMS INCORPORATED



June 26, 2017

Bob Altenbach
Brookhaven Medical
Monarch Tower
3424 Peachtree Road N.E., Suite 1150
Atlanta, GA 30326

Hi Bob,

Since DiaxaMed is not interested in engaging with Sealevel and the supply agreement was not assumed by DiaxaMED (and possibly not disclosed during the due diligence phase), attached please find the balance of Sealevel's development fees incurred to date, minus the \$10,000 already advanced.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ben O'Hanlan".

Ben O'Hanlan

cc: John M. Campbell, Esq.
Nelson, Mullins, Riley & Scarborough, LLP

Sealevel Systems Incorporated • 2779 Greenville Highway • PO Box 830 Liberty, South Carolina 29657 USA
Tel: 864.843.4343 Fax: 864.843.3067 www.sealevel.com

DEFS 000006

ROA 803



Invoice 150195

Invoice Date 06/13/17

Sealevel Systems, Inc.

2779 Greenville Hwy.

P.O. Box 830

Liberty, SC 29657 U.S.A.

Telephone: 864/843-4343

Bill To:

Brookhaven Medical

Monarch Tower

3424 Peachtree Rd NE, Ste 1150

Atlanta, GA 30326

UNITED STATES

Ship To:

Brookhaven Medical

Monarch Tower

3424 Peachtree Rd NE, Ste 1150

Atlanta, GA 30326

UNITED STATES

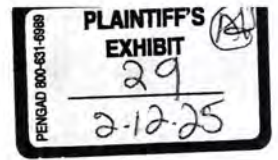
Customer		Ship Via		F.O.B.		Terms	
CRE001				Origin		Due upon receipt	
Purchase Order Number				Salesperson		Order Date	Our Order Number
						06/13/17	
Quantity Ordered	Quantity Shipped	Item Number	Unit of Measure	Unit Price		Extended Price	
	Back Ordered	Item Description		Discount %	Tax		
2386	2386	LABOR	EA	125.00		298250.00	
	0	Engineering Labor 2466 less \$10,000 NRE		N			
1	1	MISC	EA	23290.00		23290.00	
	0	Material costs - PROJECT9253		N			
Engineering labor and material costs for CreatiVasc project.							
Certificate of Compliance: Sealevel Systems Inc. certifies that all materials on this order have been manufactured, tested, and inspected to industry standards and meet purchase order requirements and specifications.							
Nontaxable Subtotal						321540.00	
Taxable Subtotal						0.00	
Tax						0.00	
Total Invoice						321540.00	

Customer Original

ROA 804

DEFS 000007

Page 1



Plaintiff's Exhibit 29

Feb 12 2025
REFERENCE ID: 1626734

Mark Hammond

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF MERGER

Corporation — Domestic
Filing Fee - \$110.00

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-1 1-105, the undersigned as the surviving corporation in a merger, hereby submits the following information:

1. The name of the surviving corporation is CreatiVasc Medical, Inc.
2. Attached hereto and made a part hereof is a copy of the Merger (see S.C. Code of Laws, Title 33, Ch. 11). Duplicate copies of the Plan of Merger **must** be attached in order for this form to be filed.
3. Complete the following information to the extent it is relevant with respect to **each** corporation which is a party to the transaction.

- (a) Name of the corporation CreatiVasc Medical, Inc.
Complete either (1) or (2), whichever is applicable.

- (1) ☐ Shareholder approval of the merger was not required (See S.C. Code of Laws §33-11-103(h)).
- (2) ☒ The Plan of Merger was duly approved by shareholders of the corporation as follows:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the meeting	Total Number of Votes Cast For AND Against*
Common Stock Series A	290,000	290,000	290,000	290,000 0
Common Stock	1,394,000	1,394,000	1,394,000	1,394,000 0
Series B Common	1,333,178	1,333,178	1,333,178	1,313,528 19,650
Series A Preferred	151,664	151,664	151,664	151,664 0
Series A-1 Preferred	259,434	259,434	259,434	259,434 0

*NOTE: Pursuant to S.C. Code of Laws §33-11-105(a)(3)(ii), the corporation can alternatively state the total number of undisputed votes cast for the Plan Merger separately by each voting group with a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

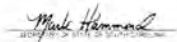
- (b) Name of the corporation Brookhaven Merger Corp.
Complete either (1) or (2), whichever is applicable.

150310-0185
CREATIVASC MEDICAL, INC
Filing Fee \$110.00 ORIG
WCSR 3
Mark Hammond
South Carolina Secretary of State

150310-0186
BROOKHAVEN MERGER CORP
Filing Fee \$0.00 ORIG
Mark Hammond
South Carolina Secretary of State

ROA 806

Feb 12 2025
REFERENCE ID: 1825734


Mark Hammond
Secretary of State

- (1) ☒ Shareholder approval of the merger was not required (See S.C. Code of Laws §33-11-103(h)),
- (2) ☐ The Plan of Merger was duly approved by shareholders of the corporation as follows:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the meeting	Total Number of Votes Cast For AND Against*

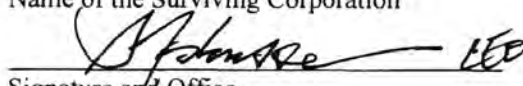
*NOTE: Pursuant to S.C. Code of Laws §33-11-105 (a)(3)(ii) the corporation can alternatively state the total number of undisputed votes cast for the Plan of Merger separately by each voting group with a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

4. Unless a delayed date is specified, the effective date of this document shall be the date it is accepted for filing by the Secretary of State (See S.C. Code of Laws §33-1-230(b)). _____

Date March 6, 2015

CreatiVasc Medical, Inc.

Name of the Surviving Corporation


Signature and Office

Steven Johnson, Chief Executive Officer/President

Type or Print Name and Office

Feb 12 2025
REFERENCE ID: 1825734



(c) Name of the corporation Brookhaven Medical, Inc.

Complete either (1) or (2), whichever is applicable.

(1) ☒ Shareholder approval of the merger was not required (See S.C. Code of Laws §33-11-103(h)).

(2) ☐ The Plan of Merger was duly approved by shareholders of the corporation as follows:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the meeting	Total Number of Votes Cast For AND Against*

***NOTE:** Pursuant to S.C. Code of Laws §33-11-105 (a)(3)(ii) the corporation can alternatively state the total number of undisputed votes cast for the Plan of Merger separately by each voting group with a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

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Feb 12 2025
REFERENCE ID: 1826734


Mark Hammond
SECRETARY OF THE STATE OF SOUTH CAROLINA

AGREEMENT AND PLAN OF MERGER

by and among

BROOKHAVEN MEDICAL, INC.,

a Delaware Corporation

BROOKHAVEN MERGER CORP.

a South Carolina Corporation

CREATIVASC MEDICAL, INC.

a South Carolina Corporation

and

TIMOTHY REED, Shareholders' Representative

Dated as of February 5, 2015

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Mark Hammond

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SECRETARY OF THE BOARD OF DIRECTORS

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Exhibit List

<u>Exhibit</u>	<u>Description</u>
A	Company Officer's Certificate
B	Company Performance Certificate
C	Investor Representation Statement
D	Merger Sub's Officer's Certificate
E	Merger Sub's Performance Certificate
F	Parent's Officer's Certificate
G	Parent's Performance Certificate
H	Proprietary Rights and Non-Disclosure Agreement
I	Registration Rights Agreement
J	Amended Certificate of Incorporation of the Company to Authorize Series B Preferred Stock
K	Certificate of Incorporation of the Surviving Company
L	Bylaws of the Surviving Company

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ROA 814

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REFERENCE ID: 1826734

Mark Hammond

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated February 5, 2015, among **BROOKHAVEN MEDICAL, INC.**, a Delaware corporation ("**Parent**"), **BROOKHAVEN MERGER CORP.**, a South Carolina corporation and a direct wholly-owned subsidiary of Parent ("**Merger Sub**"), **CREATIVASC MEDICAL, INC.**, a South Carolina corporation ("**Company**") and **TIMOTH REED**, a South Carolina resident ("**Shareholders' Representative**" and individually "**Reed**").

RECITALS

A. The Board of Directors of Company, on the terms and subject to the conditions set forth herein, has unanimously: (i) approved this Agreement; and (ii) determined to recommend that the Shareholders adopt this Agreement.

B. The respective Boards of Directors of Parent and Merger Sub have unanimously approved this Agreement and determined that the Merger is in the best interests of their respective corporations.

C. Parent, Merger Sub and Company desire to: (i) make certain representations and warranties; (ii) enter into certain covenants and agreements in connection with the Merger; and (iii) prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the Recitals and the mutual covenants, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. Except as specified otherwise, when used in this Agreement and any Exhibits or Schedules, the following terms shall have the meanings specified (such meanings shall also be applicable to the plural use of such terms herein):

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity;

"**Affiliate**" means with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; for purposes of this definition "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with") as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise;

"**Affiliate Agreement**" has the meaning set forth in Section 4.08(a)(xii);

"**Affiliate Group**" means any affiliated group in accordance with Section 2504 of the

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Code or any comparable or analogous group under applicable law.

"Agreement" means this Agreement and Plan of Merger, together with the Schedules and Exhibits, as the same shall be amended from time to time in accordance with the terms hereof;

"Benefit Arrangements" means a benefit program or practice (whether contractual, discretionary or otherwise) providing for bonuses, incentive compensation, vacation pay, severance pay, insurance, restricted stock, stock options, employee discounts, company cars, tuition reimbursement or any other perquisite or benefit (including, without limitation, any fringe benefit under Section 132 of the Code) to employees, officers or independent contractors of Sellers that is not a Plan;

"Business" means the research, development, sale and distribution of medical products;

"Business Corporation Act" has the meaning set forth in Section 2.01;

"Capital Stock" shall mean the Stock and the Preferred Stock as set forth in Section 4.03(a);

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.;

"Certificate of Merger" has the meaning set forth in Section 2.02 hereof;

"Certificates" has the meaning set forth in Section 2.06 hereof;

"Closing" means the conference to be held at 10:00 a.m., Atlanta, Georgia time on the Closing Date at the offices of _____, or at such other time and place as the parties may mutually agree to in writing, at which the transactions contemplated by this Agreement shall be consummated;

"Closing Date" means such date as the parties may mutually agree upon in writing within three (3) business days, after all of the conditions set forth in Articles VIII and IX hereof have been satisfied or waived, other than those conditions which by their terms are intended to be satisfied at Closing. The Closing shall be deemed effective as of 12:01 a.m. on the Closing Date;

"Code" means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, and any amendments or any substitute or successor provisions thereto;

"Company" means CreatiVasc Medical, Inc.;

"Company Common Stock" means the outstanding shares of Common Stock no par value of Company;

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Mark Hamann

"Company Financial Statements" means the audited financial statements of Company described in Section 4.12(a);

"Company Intellectual Property" has the meaning set forth in Section 4.09(a);

"Company Officer's Certificate" means the certificate of the Secretary of Company in the form of Exhibit "A" attached hereto;

"Company Performance Certificate" means a certificate of the Chief Executive Officer of Company in the form of Exhibit "B" attached hereto;

"Company Stock Option" has the meaning set forth in Section 2.07(a);

"Continuing Employee" has the meaning set forth in Section 10.03(b);

"Contracts" means all contracts, leases, deeds, Mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral;

"Costs" has the meaning set forth in Section 10.04(a);

"Covered Person" has the meaning set forth in Section 10.04(a);

"Current Indemnity Provisions" has the meaning set forth in Section 10.04(a);

"Defaulting Party" has the meaning set forth in Section 11.02 hereof;

"DGCL" means the Delaware General Corporation Law;

"D&O Insurance" has the meaning set forth in Section 10.04(c);

"Dissenters' Provisions" has the meaning set forth in Section 2.09 hereof;

"Dissenting Shares" has the meaning set forth in Section 2.08;

"Effective Time" has the meaning set forth in Section 2.02 hereof;

"Employees" means those Persons employed by Company immediately prior to the Closing;

"Employee Benefit Plans" means any Plan or Benefit Arrangement in which any current, former or retired employee of Company participates;

"Employment and Noncompetition Agreement" means Agreements between Company, Steve Johnson, President, Ronald Young, Vice President and Comptroller and Frank Patterson, Vice President, Engineering, each shall be for a term of five years and in a form reasonably acceptable to the parties and which the parties will negotiate in good faith between the date hereof and Closing.

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Mark Hamann

"Environmental Claim" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit;

"Environmental Law" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, import, export, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term **"Environmental Law"** includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.;

"Environmental Notice" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit;

"Environmental Permit" means any Permit, license, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law;

"Equity Securities" of any Person means: (a) any capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or non-voting, whether preferred, common or otherwise, and including phantom stock, stock appreciation, contingent interest or similar rights); and (b) any option, warrant, security or other right (including debt securities) directly or indirectly convertible into or exercisable or exchangeable for, or otherwise to acquire directly or indirectly, any stock, interest, participation or security described in clause (a) above;

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended;

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Mark Hammond

"Event of Loss" means any loss, taking, condemnation, damage or destruction of or to any of the assets of Company;

"Exchange Agent" means the Shareholders' Representative;

"Exchange Fund" has the meaning set forth in Section 2.06;

"Exhibits" means those exhibits attached to this Agreement which are incorporated herein and made a part hereof;

"Financial Report" has the meaning set forth in Section 6.04;

"FMI" shall mean FutureMatrix Interventional, Inc., a Texas corporation;

"GAAP" means United States generally accepted accounting principles as consistently applied by Company;

"Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction;

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority;

"Hazardous Materials" means any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws. **"Hazardous Materials"** includes but is not limited to polychlorinated biphenyls PCBs, asbestos, asbestos containing materials, radon, cadmium, lead-based paints, infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including, without limitation, crude oil or any fraction thereof);

"Indebtedness for Borrowed Money" means the principal amount of indebtedness of Company for borrowed money, including any Mortgages, and indebtedness to third parties with a maturity date of greater than twelve months and any accrued and unpaid interest in respect of the foregoing;

Shareholder **"Intellectual Property"** has the meaning set forth in Section 4.09(a);

"Intellectual Property Registrations" has the meaning set forth in Section 4.09(b);

"Interim Financial Statements" has the meaning set forth in Section 4.12(b);

Mark Hammond

"Investor Representation Statement" means the Statement of Representations in the form attached hereto as Exhibit "C"

"Inventory" means all inventories used in the Business, including but not limited to raw materials, work-in-process, finished goods, spare parts and supplies; and including all Inventory in transit, on order and not yet delivered, or delivered and not yet paid, and all rights with respect to the processing and completion of any works-in-process;

"IPO" means the initial public offering of shares of Common Stock of Parent pursuant to the filing of a Form S-1 Registration Statement with the SEC pursuant to the Securities Act and underwritten by a nationally recognized registered broker-dealer firm;

"IRS" means the Internal Revenue Service;

"Knowledge of Company" or **"Company's Knowledge"** or any similar knowledge qualifications means the actual knowledge after due inquiry (which is reasonable under the circumstances including reviewing matters with those employees having responsibility for a given subject area) of Steve Johnson, President, and Ronald Young, Vice-President, Finance and Chief Financial Officer;

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority;

"Leases" means all leases, subleases and other agreements of occupancy of Real Property and tangible personal property to which Company is a party;

"Licensed Intellectual Property" has the meaning set forth in Section 4.09(a);

"Liabilities" has the meaning set forth in Section 4.13(a) hereof;

"Lien" means any Mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien, lease (including any capitalized lease) or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, including without limitation any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement and the filing of or agreement to give any financing statement with respect to any of the assets of Company under the Uniform Commercial Code of the State of South Carolina or comparable law of any other jurisdiction;

"Market Value of the Shares" means an aggregate of \$23,957,996 of the Merger Consideration based on the price of the Parent's Common Stock in the IPO as established by its underwriters;

"Material Adverse Effect" means a material adverse effect, event or occurrence on the financial condition, assets, liabilities, operations or results of operations of Company taken as a whole, excluding any such effect resulting from or arising in connection with: (i) the entering into or performance of this Agreement, the transactions contemplated by this Agreement or the

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Mark Hammond

announcement thereof; (ii) changes or conditions generally affecting the industries in which Company operate; (iii) acts of war, terrorism, terrorist acts or similar perils; (iv) changes in general economic, regulatory or political conditions; (v) changes in GAAP; (vi) change in Law; or (vii) changes in the credit markets in general, including material changes in interest rates or the availability of financing; provided that the exclusions set forth in clauses (ii) through (vii) shall not apply to any effect, event or occurrence disproportionately affecting Company, any of its Subsidiaries, or the Business;

"Material Contracts" has the meaning set forth in Section 4.08(a);

"Material Lease" means: (i) any Lease for Real Property; (ii) any Lease under which Company is the lessor under which the annual rental payments received by Company is \$50,000 or more; and (iii) any other Lease under which the annual rental payments are \$50,000 or more;

"Merger" has the meaning set forth in Section 2.01(a) hereof;

"Merger Consideration" means 1,050,260 shares of the Series B Preferred Stock, \$.001 par value of Parent, as adjusted pursuant to Sections 2.05(c) and 2.05(d);

"Merger Sub" means Brookhaven Merger Corp., a South Carolina corporation;

"Merger Sub Common Stock" has the meaning set forth in Section 2.05 hereof;

"Merger Sub's Officer's Certificate" means the certificate of the Secretary of Merger Sub in the form of Exhibit "D" attached hereto;

"Merger Sub's Performance Certificate" means the certificate of the President and Secretary of Merger Sub in the form of Exhibit "E" attached hereto;

"Mortgage" means a written instrument which grants an interest in real property to secure payment of a debt or the performance of an obligation;

"Most Recent Balance Sheet" means the balance sheet contained within the most recent Financial Report delivered pursuant to Section 6.04;

"Off-the-Shelf Computer Software" means mass marketed software sold through retail channels of trade for use on a single computer, the use of which is governed by a shrinkwrap or clickwrap license;

"Parent" means Brookhaven Medical, Inc., a Delaware corporation;

"Parent Common Stock" means the Common Stock, par value \$0.001 per Share of Parent;

"Parent Financial Statement" has the meaning set forth in Section 5.10(a);

"Parent Interim Financial Statements" has the meaning set forth in Section 5.10(b);

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Mark Hamrad

"Parent's Officer's Certificate" means the certificate of the Secretary of Parent in the form of Exhibit "F" attached hereto;

"Parent's Performance Certificate" means the certificate of the President and Secretary of Parent in the form of Exhibit "G" attached hereto;

"Permits" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities, including without limitation any Environmental Permits;

"Permitted Liens" means the following Liens: (a) Liens existing on the Closing Date to remain on the assets of Company after the Closing as listed on Schedule 4.06 and Liens securing other debts that Parent elects to have the Surviving Corporation assume and pay in the ordinary course; (b) Liens for Taxes, assessments or other governmental charges or levies not yet due; (c) statutory Liens of carriers, warehousemen, mechanics', materialmen's and other Liens imposed by law created in the ordinary course of business of Company consistent with past practices for amounts not yet due; (d) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business of Company consistent with past practices in connection with worker's compensation, unemployment insurance or other types of social security; (e) with respect to interests in real property, minor defects of title, easements, rights-of-way, restrictions and other similar charges or encumbrances not materially detracting from the value of such real property or interfering with the ordinary conduct of the use of such property; (f) Liens created in favor of lessors pursuant to the Leases (but not including statutory Liens of any landlord with respect to any fixtures or equipment); and (g) Liens created by or through Parent, Merger Sub or any of their Affiliates;

"Person" means any natural person, general or limited partnership, corporation, association, limited liability company or other entity;

"Plan" means any plan, program or arrangement, whether or not written, that is or was: (a) an "employee benefit plan" as such term is defined in Section 3(3) of ERISA and (i) which was or is established or maintained by Company, (ii) to which Company contributed or was obligated to contribute or to fund or provide benefits, or (iii) which provides or promises benefits to any person who performs or who has performed services for Company and because of those services is or has been (A) a participant therein, or (B) entitled to benefits thereunder; (b) an "employee pension benefit plan" as such term is defined in Section 3(2) of ERISA, including, without limitation, any such plan that satisfies, or is intended by Company to satisfy, the requirements for tax qualification described in Section 401 of the Code; (c) a "multiemployer plan" as such term is defined in Section 3(37) of ERISA; or (d) an "employee welfare benefit plan" as such term is defined in Section 3(1) of ERISA;

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date;

"Post-Closing Taxes" means Taxes of Company for any Post-Closing Tax Period;

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"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date;

"Pre-Closing Taxes" means Taxes of Company for any Pre-Closing Tax Period;

"Proprietary Rights and Non-Disclosure Agreement" means the agreement in the form attached hereto as Exhibit "H";

"Real Property" means the real property owned, leased or subleased by Company (provided that in the case of a leasehold interest, Real Property means only that portion of the property actually leased by Company), and all buildings, improvements and fixtures thereon;

"Registration Rights Agreement" means the agreement in the form of Exhibit "I" attached hereto;

"Release" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture);

"Requisite Company Vote" has the meaning set forth in Section 6.12;

"Schedules" means those schedules referred to in this Agreement which have been bound in that separate volume by or on behalf of the parties, and delivered concurrently with the execution of this Agreement, which volume is hereby incorporated herein and made a part hereof;

"Series B Preferred Stock" means the Series B Preferred Stock, par value \$0.001 per Share of Parent pursuant to the Certificate of Designations, Powers and Preference and other Special Rights in the form of Exhibit "J";

"Shareholders' Meeting" has the meaning set forth in Section 4.02;

"Shareholders" means those Persons holding Capital Stock in Company as of the Effective Time;

"Shareholders' Representative" means Timothy Reed or any successor appointed pursuant to Section 10.02 hereof;

"Straddle Period" means any taxable period beginning on or before the Closing Date and ending after the Closing Date;

"Surviving Corporation" has the meaning set forth in Section 2.01(a);

"Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll,

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employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not;

"Tax Return" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof;

"Transaction Documents" means this Agreement, the Closing Escrow Agreement, the Indemnification Escrow Agreement, the Employment and Noncompetition Agreement, and the other documents, instruments and agreements required or contemplated herein or therein to be executed and/or delivered by the parties;

"Transaction Expenses" means the sum of the amount of the fees, commissions, expenses or other amounts that have been incurred by or on behalf of Company or Parent in connection with the preparation, negotiation and execution of this Agreement or any other Transaction Document and the consummation of the transactions contemplated hereby and thereby, including without limitation fees and expenses of any broker, investment banker, financial advisor, any legal and accounting fees and expenses;

Section 1.02. Singular/Plural; Gender. Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular, and the use of any gender includes any and all genders.

ARTICLE II THE MERGER

Section 2.01. The Merger.

(a) Subject to the terms and conditions of this Agreement, and in accordance with the DGCL and the South Carolina Business Corporation Act of 1988 (the **"Business Corporation Act"**), at the Effective Time: (i) Merger Sub shall be merged with and into Company and the separate corporate existence of Merger Sub shall thereupon cease; (ii) Company shall be the surviving corporation and shall continue to be governed by the applicable Law of the State of South Carolina; and (iii) the separate corporate existence of Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the foregoing transactions (the **"Merger"**). The corporation surviving the Merger is sometimes hereinafter referred to as the **"Surviving Corporation."** The Merger shall have the effects set forth in applicable provisions of the Business Corporation Act.

(b) At the Effective Time, subject to Section 10.04(b): (i) the certificate of incorporation of Company shall be amended to read as set forth in Exhibit "K" and, as so amended, shall be the certificate of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Laws; and (ii) the

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bylaws of Company shall be amended to read as set forth in Exhibit "L" and, as so amended, shall be the bylaws of the Surviving Corporation until thereafter changed or amended as provided therein, in the certificate of incorporation of the Surviving Corporation, or by applicable Laws.

Section 2.02. Effective Time. Subject to the provisions of this Agreement, Parent, Merger Sub and Company shall cause a certificate of merger (the "**Certificate of Merger**") to be executed and filed on the Closing Date (or on such other date as Parent and Company may agree) with the Secretary of State of the State of South Carolina in accordance with the relevant provisions of the Business Corporation Act and shall make all other filings or recordings required under the Business Corporation Act to give effect to the Merger as contemplated hereby. The Merger shall become effective at the time such Certificate of Merger has been duly filed with the Secretary of State of the State of South Carolina or such later date and time as is agreed upon by the parties and specified in the Certificate of Merger, such date and time hereinafter referred to as the "**Effective Time.**"

Section 2.03. Directors and Officers of the Surviving Corporation. Subject to applicable Laws, the directors of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation, and the officers of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation, in each case until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the Surviving Corporation's certificate of incorporation and bylaws. At the Effective Time, the directors of the Company immediately before the Effective Time shall become a board of advisors to the Surviving Corporation (the "**Board of Advisors**"). The Board of Advisors shall not be paid and shall advise the officers and directors of the Surviving Corporation on a non-binding basis from time to time.

Section 2.04. Subsequent Actions. If, at any time after the Effective Time, the Surviving Corporation shall determine, in its sole discretion, or shall be advised, that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of Company or Merger Sub acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either Company or Merger Sub, all such deeds, bills of sale, instruments of conveyance, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

Section 2.05. Effect of the Merger on the Capital Stock of the Constituted Company. As of the Effective Time, by virtue of the Merger and without any action on the part of the Shareholders of Company or holders of common stock, par value \$.001 per share, of Merger Sub (the "**Merger Sub Common Stock**"):

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(a) Each issued and outstanding share of Merger Sub Common Stock shall be converted into and become one fully paid and nonassessable share of common stock, no par value per share, of the Surviving Corporation.

(b) Any shares of Capital Stock owned by Parent, Merger Sub or any other direct or indirect wholly-owned Subsidiary of Parent shall be cancelled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Each issued and outstanding share of Common Stock and Preferred Stock of the Company (all "Equity Securities") (other than shares of Stock to be cancelled in accordance with Section 2.05(b) and other than Dissenting Shares) shall be converted automatically into and thereafter represent the right to receive its pro-rata portion of the Merger Consideration. From and after the Effective Time, all such shares of Capital Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate formerly representing any such shares of Capital Stock shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration. No cash shall be paid for any of the Company Capital Stock.

(d) The Merger Consideration shall be adjusted to reflect any change in the number of shares of Capital Stock issued and outstanding as of the Effective Time by reason of any stock dividend, stock split, recapitalization, combination, exchange of shares, merger, consolidation, reorganization or the like or any other change in the corporate or capital structure; provided, however, that nothing in this Section 2.05(d) shall be construed as permitting Company to take any action or enter into any transaction otherwise prohibited by this Agreement.

(e) The shares of Series B Preferred Stock to be issued pursuant to this Section 2.05 shall not have been registered and shall be characterized as "restricted securities" under the federal securities laws, and under such laws such shares may be resold without registration, under the Securities Act of 1933, as amended (the "Securities Act"), only in certain limited circumstances. Each certificate evidencing shares of Series B Preferred Stock to be issued pursuant to this Section 2.05 shall bear the following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION WITHOUT AN EXEMPTION UNDER THE SECURITIES ACT OR AN OPINION OF LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

and any legends required by state securities laws.

Section 2.06. Exchange of Stock Certificates.

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(a) No later than three (3) business days before the Effective Time, Parent shall deliver to the Exchange Agent (to be appointed by Parent and approved by the Company) for deposit into the Exchange Fund certificates which immediately prior to the Effective Time represents outstanding Stock (the "Certificates") and whose shares of Stock will be converted pursuant to Section 2.05 into the right to receive the Merger Consideration: (i) a letter of transmittal (which shall be in such form and have such other provisions as are reasonably acceptable to Company); and (ii) instructions from the Exchange Agent for effecting the surrender of the Certificates in exchange for receipt of the Merger Consideration. Upon surrender of a Certificate for cancellation to Exchange Agent, together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration for each share of Stock formerly represented by such Certificate. The Merger Consideration shall be delivered at the Closing or, if later, upon Exchange Agent's receipt of such documents and the Certificate so surrendered shall forthwith be cancelled. If the Merger Consideration is to be delivered to a Person other than the Person in whose name the surrendered Certificate is registered, then it shall be a condition precedent of delivery that (x) the Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer, and (y) the Person requesting such payment shall have paid any transfer and other taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of the Certificate surrendered or shall have established to the satisfaction of the Surviving Corporation that such tax either has been paid or is not required to be paid. Until surrendered as contemplated by this Section 2.06, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration as contemplated by Section 2.05 and this Section 2.06, without interest thereon.

(b) At the Effective Time, the stock transfer books of Company shall be closed and thereafter there shall be no further transfers of Stock on the records of Company, other than transfers that occurred before the Effective Time.

(c) From and after the Effective Time, the holders of Certificates outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares of Stock except as otherwise provided for herein or by applicable Laws. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article II.

(d) Any portion of the Exchange Fund which remains undistributed to the Shareholders of the Company one year after the Effective Time shall be delivered to Parent upon demand, and any Shareholders of Company who have not previously complied with this Section 2.06 shall thereafter look only to Parent for payment of their claim for the Merger Consideration.

(e) In the case of any Certificate claimed to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by the Surviving Corporation, the posting by such Person of a bond in such customary amount as the Surviving Corporation

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may direct, as indemnity against any claim that may be made against it with respect to such Certificate, Parent will issue in exchange for such lost, stolen or destroyed Certificate payment in the amount of the number of shares of Stock represented by such lost, stolen or destroyed Certificate multiplied by the Merger Consideration payable as contemplated by this Section 2.06, without interest thereon.

(f) Notwithstanding the foregoing, none of Parent, Merger Sub, Company or the Surviving Corporation shall be liable to any holder of a Certificate for Merger Consideration properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

Section 2.07. Treatment of Stock Options

(a) The Company shall take all requisite action so that, at the Effective Time, each option to acquire shares of Company Common Stock (each, a "**Company Stock Option**") that is outstanding immediately prior to the Effective Time, whether or not then vested or exercisable, shall be, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company, the holder of that Company Stock Option or any other Person, cancelled and converted into a replacement option (a "**Replacement Option**") to purchase Parent Common Stock on the same terms and conditions as were applicable to such Company Stock Option and at an exercise price adjusted to account for the exchange ratio and number of shares of Parent Common Stock issuable to such a holder. For the avoidance of doubt, the Replacement Options issued to holders of Company Stock Options shall provide for the aggregate purchase of 251,134.92 shares of Parent Common Stock, with each option at an exercise price of \$7.635 per share.

(b) At or prior to the Effective Time, the Company, the Company Board and the compensation committee of such board, as applicable, shall adopt any resolutions and take any actions (including obtaining any employee consents) that may be necessary to effectuate the provisions of this Section 2.07.

Section 2.08. Dissenting Shares

(a) Notwithstanding anything in this Agreement to the contrary, Stock outstanding immediately prior to the Effective Time and held by a holder who is entitled to demand and properly demands appraisal of such shares of Stock ("**Dissenting Shares**") pursuant to, and who complies in all respects with, applicable provisions of the Business Corporation Act (the "**Dissenters' Provisions**") shall not be converted into the right to receive Merger Consideration as provided in Section 2.05 but rather the holders of such Dissenting Shares shall be entitled to payment of the fair value of such Dissenting Shares in accordance with the Dissenters' Provisions; provided, however, that if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to an appraisal of such holder's Dissenting Shares under the Dissenters' Provisions, then the right of such holder to be paid the fair value of such holder's Dissenting Shares shall cease and such Dissenting Shares shall be deemed to have been converted into the right to receive the Merger Consideration as of the Effective Time as provided in Section 2.05.

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(b) Company shall give prompt notice to Merger Sub of any demands received by Company for appraisal rights in respect of any Stock, and Merger Sub shall have the opportunity to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, other than pursuant to a court order, Company shall not, without the prior written consent of Merger Sub, make any payment with respect to, or settle or compromise or offer to settle or compromise, any such demand, or agree to do any of the foregoing with respect to the Dissenting Shares.

Section 2.09. Deliveries on Closing. At the Closing on the Closing Date, Parent shall:

(a) deliver to the Exchange Agent the Certificates for the aggregate Merger Consideration to the Shareholders, in accordance with Section 2.06;

(b) pay the Transaction Expenses in accordance with invoices and wire instructions therefor provided by third parties no less than three (3) days prior to the Closing.

Section 2.10. Closing Date Deliveries. At the Closing on the Closing Date:

(a) In addition to the Merger Consideration and the additional payments described in Section 2.10, Parent shall deliver, or cause to be delivered, to Shareholders' Representative properly executed and dated as of the Closing Date: (i) Merger Sub's Officer's Certificate in the form of Exhibit "D"; (ii) Merger Sub's Performance Certificate in the form of Exhibit "E"; (iii) Parent Officer's Certificate in the form of Exhibit "F"; (iv) Parent's Performance Certificate in the form of Exhibit "G"; and (vii) such other documents as provided in Article IX hereof.

(b) Company shall deliver, or cause to be delivered, to Parent properly executed and dated as of the Closing Date: (i) the resignation of the officers and members of the Board of Directors of Company as designated by Parent; (ii) Company Officer's Certificate in the form of Exhibit "A"; (iii) Company's Performance Certificate in the form of Exhibit "B"; (iv) the stock books, stock ledgers, minute books, corporate seals and all other corporate records of Company; and (v) such other documents as provided in Article VIII hereof.

Section 2.11. Allocation. The aggregate Merger Consideration shall be allocated as set forth on Schedule 2.11.

ARTICLE III GOVERNMENTAL APPROVALS

Section 3.01. Governmental Approvals. Promptly following the execution of this Agreement, the parties shall proceed to prepare and file with the appropriate Governmental Authorities any requests for approvals or waivers, if any, that are required from Governmental Authorities in connection with the Closing (including without limitation any approvals or waivers required with respect to the Permits), and shall diligently and expeditiously prosecute,

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and shall cooperate fully with each other in the prosecution of, such requests for approvals or waivers and all proceedings necessary to secure such approvals and waivers.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF COMPANY

Company represents and warrants to Parent and Merger Sub the following:

Section 4.01. Organization. Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of South Carolina. Company has the power to own, lease and operate its business assets and to conduct its Business as it is now being conducted. Company is duly qualified and licensed and in good standing as a foreign corporation in each jurisdiction set forth on Schedule 4.01, constituting each jurisdiction in which such qualification is required, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. A copy of the certificate of incorporation of Company as amended and currently in force, has been delivered to Parent, and is true, complete and correct in all material respects.

Section 4.02. Authority of Company; Voting Requirements; Enforceability. Company has full power and authority to enter into this Agreement and the other Transaction Documents, and subject to obtaining the Company Shareholder Approval, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Company of this Agreement and the other Transaction Documents, the performance by Company of its obligations hereunder and thereunder and the consummation by Company of the transactions contemplated hereby and thereby have been duly authorized and approved by the Company Board, which, at a meeting duly called and held, has unanimously: (i) deemed this Agreement and the transactions contemplated hereby, including the Merger, to be in the best interests of the Shareholders of Company; (ii) unanimously approved this Agreement and the transactions contemplated hereby, including the Merger, in all respects; and (iii) resolved to recommend that this Agreement and the transactions contemplated hereby, including the Merger, be approved by the Shareholders of Company, and, except for obtaining the affirmative vote (in person or by proxy) of the holders of two-thirds of the outstanding shares of Company Common Stock entitled to vote on the Merger ("Company Shareholder Approval") at a meeting of Shareholders of Company or any adjournment or postponement thereof ("Shareholders' Meeting"), no other corporate action on the part of Company is necessary to authorize the execution, delivery and performance by Company of this Agreement and the consummation of the transactions contemplated hereby. This Agreement is, and the other Transaction Documents will be, when executed and delivered by Company, assuming due authorization, execution and delivery of this Agreement and the other Transaction Documents by the other parties hereto, the valid and binding obligations of Company, enforceable against Company in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar Laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

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Section 4.03. Capitalization of Company.

(a) Company has authorized capital stock consisting of 20,000,000 shares of Common Stock, ___ par value per share, of which 1,394,000 shares are currently issued and outstanding; 5,000,000 shares of Company Preferred Stock consisting of Series A-1 Preferred Stock, no par value per share (1,000,000 shares authorized and ___ issued) (the "Series A-1 Preferred Stock"); Series A Preferred Stock, no par value per share (500,000 shares authorized and 290,000 shares issued) (the "Series A Preferred Stock"); Series B Preferred Stock, no par value per share (2,000,000 shares authorized and 1,333,178 issued) (the "Series B Preferred Stock"). All of the issued and outstanding stock of Company is duly authorized and validly issued, fully paid and nonassessable, and except for rights held by holders of A-1 Preferred Stock, there are no preemptive or tag-along rights or rights of first refusal in respect thereof. The Stock and the Preferred Stock constitute all of the issued and outstanding Equity Securities of Company or Capital Stock of the Company.

(b) Except as set forth on Schedule 4.03(b), there are no outstanding options, warrants or other rights to subscribe for or purchase from Company, no contracts or commitments providing for the issuance of, or the granting of rights to acquire, and no securities convertible into or exchangeable for, any Equity Securities in Company.

(c) All of the outstanding Capital Stock of Company is owned by Shareholders free and clear of all Liens, in the amounts set forth on Schedule 4.03(c), and there is no other holder of record of the outstanding Capital Stock or other ownership interests of Company. No Shareholder is a party to any agreement, contract or commitment contemplating a transfer or change in record or beneficial ownership of any of the Stock.

Section 4.04. Subsidiaries. The Company has no subsidiaries.

Section 4.05. Absence of Conflicting Agreements. Except as set forth on Schedule 4.05, neither the execution, delivery or performance of this Agreement or any of the other Transaction Documents in accordance with their respective terms by Company, nor the consummation of the transactions contemplated hereby (including without limitation the Merger) and thereby does or will, after the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under: (i) the certificate of incorporation or bylaws, certificate of organization or other organizational document of Company; (ii) any Law or Governmental Order applicable to Company; or (iii) any Material Contract or Material Lease to which Company is a party or by which such Person is bound except with respect to (iii) to the extent such conflict, breach or default could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) result in the creation of any Lien, other than Permitted Liens, upon any of the assets of Company;

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(c) terminate, amend (in any material respect) or modify (in any material respect), or give any party the right to terminate, amend (in any material respect), modify (in any material respect), abandon or refuse to perform, any Material Contract or Material Lease to which Company is a party;

(d) accelerate or modify (in any material respect), or give any party the right to accelerate or modify (in any material respect), the time within which, or the terms under which, any duties or obligations are to be performed, or any rights or benefits are to be received, under any Material Contract or Material Lease to which Company is a party;

(e) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any Governmental Authority, if the failure to satisfy such requirement would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(f) require the consent of any Person under any Material Contract or any Material Lease; or

(g) result in a cancellation, modification, revocation or suspension of any Permit which would materially affect the operation of the Business.

Section 4.06. Title to Assets; Liens and Encumbrances. Except as set forth on Schedule 4.06, Company owns good and marketable title to, or has valid and enforceable license or leasehold interests in, all of its assets (other than the Real Property, as to which Section 4.10 shall apply) free and clear of any and all Liens except for Permitted Liens. The assets owned, leased, or licensed by Company constitute all of the assets utilized in the conduct the Business as currently conducted.

Section 4.07. Condition of Assets. Except as set forth on Schedule 4.07, the furniture, fixtures, machinery, equipment, vehicles and other material items of tangible personal property of Company are in good operating condition and repair, ordinary wear and tear excepted.

Section 4.08. Material Contracts.

(a) Schedule 4.08 lists each of the following Contracts of Company (such Contracts, together with all Contracts concerning the occupancy of any Real Property and all Contracts relating to Intellectual Property set forth on Schedules 4.09(d) and 4.09(g), being "**Material Contracts**");

(i) each Contract of Company involving aggregate consideration in excess of \$50,000 and which, in each case, cannot be cancelled by Company without penalty or without more than 90 days' notice;

(ii) all Contracts that require Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

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(iii) all Contracts that provide for the indemnification by Company of any Person or the assumption of any Tax, Environmental Claim or other Liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing or other consulting and advertising Contracts to which Company is a party;

(vi) all agency Contracts to which Company is a party;

(vii) all employment, termination or severance agreements with former employees, and all agreements and Contracts with independent contractors or consultants (or similar arrangements) to which Company is a party and which are not cancellable without material penalty or without more than 90 days' notice;

(viii) all Contracts relating to Indebtedness for Borrowed Money (including, without limitation, guarantees) of Company or relating to the grant of any Lien other than Permitted Liens on any asset of Company;

(ix) all Contracts with any customer that accounts for more than ten (10%) percent of annual gross sales of the Company or Governmental Authority to which Company is a party;

(x) all Contracts that limit or purport to limit the ability of Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

(xi) any Contracts to which Company is a party that provide for any joint venture, partnership or similar arrangement by Company or the sharing of revenues between Company and a third party;

(xii) all Contracts between or among Company on the one hand and Shareholders or any Affiliate of Shareholders on the other hand (each, an "Affiliate Agreement");

(xiii) all Contracts, plans or arrangements providing for any bonus, stock option, stock ownership, stock purchase or stock appreciation right;

(xiv) all collective bargaining agreements or Contracts with any labor organization, union or association to which Company is a party;

(xv) all Contracts for capital expenditures in excess of \$50,000;

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(xvi) all Contracts containing any "change in control" or "parachute payment" provisions, as those terms are commonly understood, which would be triggered by the execution, delivery or consummation of the transactions contemplated by this Agreement or any other Transaction Document, including any right of termination, right of payment or acceleration of any other right under such Contract;

(xvii) all Contracts for outsourcing of manufacturing activities;

(xviii) all Contracts that constitute a reseller agreement, distribution agreement or any other agreement pursuant to which Company has the right to market, distribute or sell any product or service of any third party, or any third party has the right to market, distribute or sell any product or service of the Business, in each case whether on a stand-alone basis or integrated with other products, services or both; and

(xix) any other Contract that is material to Company, taken as a whole, and not previously disclosed pursuant to this Section 4.08.

(b) Each Material Contract is valid and binding on Company, in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium or similar Laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies and is in full force and effect. The Company is not in breach of or default in any material respect, of any Material Contract. To Company's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a material event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any material right or obligation or the loss of any material benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been provided to Parent.

Section 4.09. Intellectual Property.

(a) "Intellectual Property" means the following intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world, including such property that is owned by Company ("Company Intellectual Property") and, except for Off-the-Shelf Computer Software, in which Company holds exclusive or non-exclusive rights or interests granted by license from other Persons, including the Shareholders ("Licensed Intellectual Property"):

(i) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications;

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(ii) Internet domain names, whether or not trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority;

(iii) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications;

(iv) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and

(v) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

(b) Schedule 4.09(b) lists all Company Intellectual Property that is subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction (collectively, "**Intellectual Property Registrations**"), including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing. All material required filings and fees related to the Intellectual Property Registrations have been filed with and paid to the relevant Governmental Authorities and authorized registrars to the extent due. Company has provided Parent with access to its file histories, documents, certificates, office actions, correspondence and other materials related to all material Intellectual Property Registrations.

(c) Except as set forth in Schedule 4.09(c) or (d), Company owns, exclusively or jointly with such other Persons as are listed on Schedule 4.09(c) or (d), as applicable, all right, title and interest in and to Company Intellectual Property material to the operation of the Business as presently conducted, free and clear of Liens other than Permitted Liens. Company is in compliance with all legal requirements applicable to Company Intellectual Property and Company's ownership and use thereof, all as of the date hereof except where the failure to be in such compliance could not reasonably be expected to have a Material Adverse Effect.

(d) Schedule 4.09(d) lists all licenses, sublicenses and other agreements whereby Company is granted rights, interests and authority, whether on an exclusive or non-exclusive basis, with respect to any Licensed Intellectual Property that is material to the operation of the Business as presently conducted other than Off-the-Shelf Computer Software. Company has provided Parent with true and complete copies of all such agreements.

(e) To Company's Knowledge, Company's conduct of the Business does not infringe, violate or misappropriate the Intellectual Property of any Person except where such infringement could not reasonably be expected to materially adversely affect the

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operations of the Business as presently conducted. The Company has not received any written notice, and no Action has been instituted, settled or, to Company's Knowledge, threatened that alleges any such infringement, violation or misappropriation, and none of Company Intellectual Property is subject to any outstanding Governmental Order.

(f) The Company Intellectual Property and the Licensed Intellectual Property collectively constitute all of the Intellectual Property used in connection with the conduct by Company of the Business in the ordinary course as presently conducted.

(g) Schedule 4.09(g) lists all material licenses, sublicenses and other agreements pursuant to which Company grants rights or authority to any Person with respect to any Company Intellectual Property or Licensed Intellectual Property except for licenses granted in connection with the lease of addition systems in the ordinary course of the Business. Company has provided Parent with true and complete copies of all such agreements. All such agreements are valid, binding and enforceable against Company and, to Company's Knowledge, the other parties thereto, and Company and, to Company's Knowledge, such other parties are in material compliance with the terms and conditions of such agreements. To Company's Knowledge no Person has infringed, violated or misappropriated, or is infringing, violating or misappropriating, any Company Intellectual Property or Licensed Intellectual Property.

(h) Except as listed on Schedule 4.09(h), Company has no computer software developed by, for, or on behalf of any of them which is proprietary to any of them.

(i) Company has taken commercially reasonable measures to protect the confidential and proprietary nature of the Company Intellectual Property and the Licensed Intellectual Property. The documentation of the proprietary information of Company is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the special knowledge or memory of others.

(j) To Company's Knowledge, no current or former employee, director or officer of Company is in default under any material term of any confidentiality agreement with respect to Company Intellectual Property. Each current and former employee of Company has irrevocably assigned to Company all right, title and interest in and to any Intellectual Property constituting part of or relating, directly or indirectly, to the Business which such employee or former employee made, developed, conceived or reduced to practice alone or with others in connection with his or her performance of services for Company.

(k) To Company's Knowledge, there is no fact, matter, event or circumstance which would suggest that the validity of any Company Intellectual Property material to the operation of the Business as presently conducted is under threat, likely to be challenged or the subject of any claim for ownership or compensation (regardless of whether or not any threat, challenge or claim is well-founded).

Section 4.10. Real Property. The Company does not own any real property.

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Section 4.11. Leases. Schedule 4.11 lists all Material Leases of Real Property

(a) Company has performed in all material respects each term, covenant and condition of each of the Material Leases which is required to be performed by Company at or before the date hereof, and no material default on the part of Company and, to the Knowledge of Company, any other party thereto, or event which with the passing of time or giving of notice or both would constitute a material default on the part of Company or, to the Knowledge of Company any other party thereto, exists under any such Lease;

(b) each of the Material Leases is in full force and effect and constitutes the legal and binding obligation of Company, subject only to bankruptcy, insolvency, reorganization, moratorium or similar Laws at the time in effect affecting the rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies, and, to the Knowledge of Company, each other party thereto, in accordance with its terms;

(c) Company has made available true and complete copies of the Material Leases to Parent, including any and all amendments thereto (except for any Material Lease in the nature of a lease of an addition system for which representative samples have been provided);

Section 4.12. Financial Statements.

(a) Attached as Schedule 4.12(a) are true and complete copies of the audited consolidated balance sheets of Company, as at each of the years ended December 28, 2012 and December 28, 2013, and the related statements of operations and statement of cash flow for the fiscal years then ended, including any notes and schedules thereto (the "**Company Financial Statements**"). The Company Financial Statements have been prepared in accordance with GAAP throughout the periods covered thereby and present fairly in all material respects the financial condition of Company as at the dates indicated and the results of their operations and changes in cash flow for the periods then ended.

(b) Attached as Schedule 4.12(b) are true and complete copies of the unaudited balance sheet of Company as at December 31, 2014, and the related operating statements and statements of cash flow for the period then ended (the "**Interim Financial Statements**"). The Interim Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with the Financial Statements and present fairly in all material respects the financial condition of Company as at the date indicated and the results of operations and changes in cash flow for the period then ended; subject, however, to year-end adjustments which, in the aggregate, will not be materially adverse, and provided, that the Interim Financial Statements do not contain footnotes.

(c) When delivered, the monthly Financial Reports required to be delivered pursuant to Section 6.04 shall have been prepared in conformity with GAAP applied on a basis consistent with the Financial Statements and will present fairly in all material respects

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the financial condition of Company as at the dates indicated and the results of its operations for the periods then ended; subject, however, to year-end adjustments which, in the aggregate, will not be materially adverse, and provided, that such Financial Reports will not contain footnotes.

Section 4.13. Absence of Undisclosed Liabilities.

(a) The Company does not have any debt, liability or obligation of any kind, whether accrued, absolute, contingent or otherwise, including, without limitation, any liability or obligation on account of Taxes or any governmental charges or penalties, interest or fines of a type or nature required to be disclosed on the Financial Statements or Interim Financial Statements under GAAP ("Liabilities"), except: (i) those Liabilities reflected in the Financial Statements and Interim Financial Statements; (ii) Liabilities disclosed on Schedule 4.13(a); (iii) Liabilities incurred in the ordinary course of business since January 1, 2013; (iv) the Transaction Expenses; and (v) such other Liabilities as are not material individually or in the aggregate.

(b) Except as set forth on Schedule 4.13(b), the Company has not, by written instrument or otherwise, guaranteed the payment or collection or pledged any of its assets to secure payment of any unsatisfied indebtedness or other obligation of any Person.

(c) Except as set forth on Schedule 4.13(c), there are no Liabilities owed by Company to any of its Affiliates.

Section 4.14. No Material Adverse Change. As of the date hereof, except as set forth on Schedule 4.14, since December 31, 2013, as to Company, there has been no:

(a) Material Adverse Effect nor any fact or condition in existence or threatened that would result in a Material Adverse Effect;

(b) default under any indebtedness, or any event which with the lapse of time or the giving of notice, or both, would constitute such a default;

(c) declaration, setting aside or payment, directly or indirectly, of any cash or noncash dividend or other cash or noncash distribution in respect of any of the securities of Company or any direct or indirect redemption, purchase or other acquisition of such securities (including but not limited to the Stock or other Equity Securities of Company);

(d) material damage, destruction or loss, whether or not covered by insurance;

(e) increase in compensation payable or to become payable to any of the officers, directors or employees or any change in any bonus payment or arrangement made with any such Person, or any material change in personnel policies or benefits except, in each case, in the ordinary course of business consistent with past practice;

(f) Material Contract, Material Lease, entered into or consummated except in the ordinary course of business consistent with past practice;

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(g) amendment or termination of any Material Contract or Material Lease except in the ordinary course of business;

(h) sale, assignment, license, lease or other transfer or disposition (including any transfer to any Affiliate) of any of the assets except in the ordinary course of business or in connection with the acquisition of similar property or assets in the ordinary course of business;

(i) amendment to the articles of incorporation or bylaws or other organizational documents;

(j) material change in the accounting methods or principles;

(k) any loan to, or entry into any other transaction with, any of its directors, officers and employees other than in the ordinary course of business;

(l) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(m) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law, or entering into by Company or its Shareholders of any agreement or contract other than this Agreement relating to the sale or transfer of any Stock or other Equity Securities of Company, or a change of control of Company;

(n) imposition of any Lien (other than Permitted Liens) on any material asset;

(o) failure to maintain policies of insurance in effect or to give any notice or present any claim under any such policy when due;

(p) capital expenditure or commitment therefor in excess of \$100,000 other than for ordinary repairs or maintenance;

(q) as of the date hereof, no commitment for capital expenditures in excess of \$50,000;

(r) failure or refusal to make, in a timely manner, all material filings and declarations with and notices to Government Authorities; or

(s) agreement to do any of the foregoing.

Section 4.15. No Litigation; Labor Disputes; Compliance with Law. Except as set forth on Schedule 4.15:

(a) as of the date hereof, there is no Action before or by any Governmental Authority or any third party, pending or, to the Knowledge of Company, threatened, to

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which Company is a party or otherwise relating to the Business. There are no outstanding injunctions, judgments or other Government Orders against Company or affecting the Business. No Action listed on Schedule 4.15 will have, individually or in the aggregate, a Material Adverse Effect;

(b) Company is not subject to or bound by any labor agreement or collective bargaining agreement and there is no material labor dispute, grievance, controversy, strike or request for union representation pending or, to the Knowledge of Company, threatened against Company;

(c) At all times, Company has owned and operated the Business and carried on and conducted the Business in material compliance with Law and all Governmental Orders applicable to Company or the Business.

Section 4.16. Taxes. Except as set forth on Schedule 4.16:

(a) Company has duly and timely filed all required federal, state, local and foreign Tax Returns with the appropriate governmental agencies in all jurisdictions in which such returns and reports are required to be filed. All such Tax Returns are true and complete in all material respects and were prepared in compliance with all applicable Law. Company has withheld and paid all Tax required to be withheld and paid in connection with any amounts paid or owing to an employee, independent contractor, creditor, Shareholder, or other third party. All Taxes due and owing from Company (whether or not shown on any Tax Return) have been fully paid. Company is not currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where Company does not file Tax Returns that Company is or may be subject to taxation by that jurisdiction;

(b) Company: (i) is not a party to or bound by, or have any obligation under, any Tax sharing or similar agreement; (ii) has not been a member of an "Affiliated Group" filing a consolidated federal income Tax Return (other than a group the common parent of which was Company); or (iii) does not have any Liability for the payment of Taxes of any Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract or otherwise;

(c) There are no federal, state, local or non-U.S. tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Company. Company has not received from any federal, state, local, or non-U.S. taxing authority any: (i) notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters; or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority against Company. Schedule 4.16(c) lists all federal, state, local, and non-U.S. Income Tax Returns filed with respect to any of Company for taxable periods ended on or after December 1, 2011. Schedule 4.16(c) indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. Company has delivered to Parent correct and complete

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copies of all income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by Company filed or received since January 1, 2011;

(d) Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) change in method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "closing agreement" as described in section 7121 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax law) executed on or prior to the Closing Date;

(iii) intercompany transaction or excess loss account described in Treasury Regulations under section 1502 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax law);

(iv) installment sale or open transaction disposition made on or prior to the Closing Date; or

(v) prepaid amount received on or prior to the Closing Date;

(e) Company is not a party to any agreement, contract, arrangement, or plan that has resulted or could result, separately or in the aggregate, in the payment of: (i) any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of state, local or non-U.S. Tax Law); and (ii) any amount that will not be fully deductible as a result of Section 162(m) of the Code (or any corresponding provision of state, local, or non-U.S. Tax Law);

(f) Company has not been a United States Real Property Holding Corporation within the meaning of Section 897(c)(2) of the Code during the applicable periods specified in Section 897(c)(1)(A)(ii) of the Code;

(g) Schedule 4.16(g) sets forth all foreign jurisdictions in which Company is subject to Tax, is engaged in business or has a permanent establishment. Company has not entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8, nor has Company transferred an intangible, the transfer of which would be subject to the rules of Section 367(d) of the Code;

(h) there are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets or properties of Company;

(i) Company has not participated in any reportable transaction within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b) (or any similar provision of any Tax Law);

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(j) Company has not distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code;

(k) Company will not be required to include in a taxable period ending after the Closing Date taxable income attributable to income that accrued in a taxable period prior to the Closing Date but was not recognized for Tax purposes in such prior taxable period as a result of: (i) the installment method of accounting; (ii) the completed contract method of accounting; (iii) the long-term contract method of accounting; (iv) the cash method of accounting; (v) Section 481 of the Code or comparable provisions of any Tax Law; or (vi) Section 108(i) of the Code or comparable provision of any Tax Law;

(l) Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency;

(m) Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income tax within the meaning of Section 6662 of the Code;

(n) the unpaid Taxes of Company: (i) did not, as of the most recent Financial Report, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than any notes thereto); and (ii) do not exceed the reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of Company in filing its Tax Returns. Since the date of the Most Recent Balance Sheet, Company has not incurred any liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the ordinary course of business consistent with past custom and practice.

Section 4.17. Insurance. Schedule 4.17 is a true and complete list of all insurance policies insuring the Business, properties and assets of Company. All of such policies are in full force and effect in accordance with their terms, and no written notice of cancellation has been received and left uncured. Company is not in material default with respect to such insurance policies, nor has Company failed to give any notice or present any claim under any policies in due and timely fashion. Except as set forth on Schedule 4.17, all premiums due and owing to date have been paid in full. All claims in excess of \$100,000 that could be asserted under the above insurance policies based on circumstances arising since January 1, 2012 have been timely notified to the carrier(s) issuing the applicable policy(ies). Company has not been refused any insurance, nor has the coverage of Company been limited, by any insurance carrier to which Company has applied for insurance or with which Company has carried insurance during the past five years. Company has not been advised by any of its respective insurance carriers of any disputes between Company on the one hand and any insurance carrier on the other hand regarding coverage, claims, settlements or premiums. All reports of insurers pertaining to the Business and Real Property received by Company in calendar years 2012 and 2013 have been made available to Parent.

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Section 4.18. Brokers. Neither this Agreement nor the transactions contemplated by this Agreement was induced or procured through any Person acting on behalf of, working for or representing Company or the Shareholders as broker, finder, investment banker, financial advisor or in any similar capacity.

Section 4.19. Banks. Schedule 4.19 sets forth the name of each bank or other financial institution in which Company has an account, lock box, or safe deposit box or vault and the names of all Persons authorized to draw thereon or have access to any such account, safe deposit box or vault.

Section 4.20. Employees. Schedule 4.20 is a true and complete list of all Employees of Company as of the date hereof, which list identifies the name and position of each such Employee, and the following compensation information for fiscal years 2012 and 2013: (a) annual base salary, (b) annual bonus, (c) commissions, (d) perquisites, (e) severance, and (f) all other material items of compensation. Except as set forth on Schedule 4.20, there are no collective bargaining agreements, employment agreements, severance agreements, consulting agreements or independent contractor agreements to which Company is a party which are not terminable at will without Liability. Except as set forth on Schedule 4.20, the consummation of the transactions contemplated under this Agreement will not cause Company to incur or suffer any Liability relating to, or obligation to pay, severance, termination, or other payments to any Person or entity. Company is in compliance in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and have not and are not engaged in any unfair labor practice; and, except as disclosed in Schedule 4.20, no unfair labor practice complaint, employment discrimination complaint, wage and hour complaint, or occupational safety and health complaint against Company is pending before any Government Authority, including the National Labor Relations Board or a similar governing body. Company has paid or accrued on the Most Recent Balance Sheet all compensation and benefits (including accrued vacation, sick leave or similar benefits) to any of Company's employees.

Section 4.21. Employee Benefit Plans. Company has not at any time established, maintained or been a party to or made contributions to any Employee Benefit Plan.

Section 4.22. Environmental Compliance. Company is not currently nor has it formerly owned, operated or leased Real Property which is in the possession or control of the Shareholders or Company related to Environmental Permits, compliance with Environmental Laws, Environmental Claims, Environmental Notices or Releases of Hazardous Materials. The representations and warranties made pursuant to this Section 4.22 are the exclusive representations and warranties by Company regarding (x) compliance with or liability under Environmental Laws or Environmental Permits, (y) Environmental Claims or Environmental Notices, or (z) Hazardous Materials.

Section 4.23. Affiliated Transactions. Except as provided in Schedule 4.23 hereto, no officer, director, Shareholder or to Company's Knowledge Employee of Company, and to Company's Knowledge, no family member of any of the foregoing, has any contractual relationship with Company (other than as an Employee) or any direct or indirect interest in any

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customer, supplier or competitor of Company, or in any other Person with whom Company is doing business or otherwise has an agreement, arrangement or understanding, written or oral with Company, whether in existence as of the date hereof or proposed, other than the ownership of stock of publicly traded corporations that does not exceed 1% of the issued and outstanding stock of such corporation.

Section 4.24. Books and Records. The minute book, stock ledger and corporate charter documents of Company, as previously made available to Parent and its representatives, contain complete and accurate records in all material respects of all meetings of, and corporate actions taken by (including action taken by written consent) Company, and its Shareholders and board of directors. Company's records, systems, controls, data or information recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are under the exclusive ownership and direct control of Company.

Section 4.25. No Other Representations or Warranties; Independent Investigation. Except for the representations and warranties contained in this Article IV (including the related portions of the Schedules) and in the other Transaction Documents and the oral representations reduced to writing and set forth on Schedule 4.25, neither Company or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Company. Parent has conducted its own independent investigation, review and analysis of Company and acknowledges that Parent has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Company for such purpose. Parent acknowledges and agrees that (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Parent has relied solely upon (i) its own investigation, and (ii) the express representations and warranties set forth in this Agreement (including the related portions of the Schedules) and in the other Transaction Documents; and (b) neither Company nor any other Person has made any other representation or warranty as to Company.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Section 5.01. Organization and Authority of Parent and Merger Sub; Shareholder of Merger Sub. Parent is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of South Carolina. Each of Parent and Merger Sub has full corporate power and authority to enter into this Agreement. Parent is the sole shareholder of Merger Sub.

Section 5.02. Authorization; Enforceability. The execution, delivery and performance of this Agreement and all of the documents and instruments required hereby from each of Parent and Merger Sub have been duly authorized by all necessary corporate action by each of Parent and Merger Sub (including the sole shareholder of Merger Sub). This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by each

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of Parent and Merger Sub, the valid and binding obligations of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar Laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

Section 5.03. Capitalization of Parent.

(a) The authorized capital stock of Parent consists of: (i) 20,000,000 shares of common stock, par value \$0.001 per share ("Parent Common Stock"); and (ii) 10,000,000 shares of preferred stock, par value \$0.001 per share. At the close of business on December 5, 2014, (w) 1,013,847 shares of Parent Common Stock were issued and outstanding, (x) 841,613 shares of Series A Preferred Stock were issued and outstanding and (y) 700,000 shares of Parent Common Stock were reserved for issuance under Parent's stock option plan with options to purchase 320,000 shares of Parent Common Stock ("Parent Stock Options") issued. All of the issued and outstanding stock of Parent is duly authorized and validly issued, fully paid and nonassessable, and there are no preemptive or tag-along rights or rights of first refusal in respect thereof. The Parent Common Stock, Series A Preferred Stock, and the Parent Stock Options constitute all of the issued and outstanding Equity Securities of Parent.

(b) Except as set forth on Schedule 5.03(b), there are no outstanding options, warrants or other rights to subscribe for or purchase from Parent, no contracts or commitments providing for the issuance of, or the granting of rights to acquire, and no securities convertible into or exchangeable for, any Equity Securities in Parent.

(c) Except as set forth on Schedule 5.03(c) there is no other holder of record of the outstanding Equity Securities of Parent.

Section 5.04. Subsidiaries. Parent has no subsidiaries other than Merger Sub.

Section 5.05. Title to Assets; Liens and Encumbrances. Except as set forth on Schedule 5.05, Parent owns good title to, or has valid and enforceable license or leasehold interests in, all of its assets free and clear of any and all Liens except for Permitted Liens. Except as set forth in Schedule 5.05, (a) no Person other than Parent owns any equipment or other tangible assets or properties situated on any premises owned, leased or occupied by Parent, and (b) none of the equipment or other tangible assets or properties owned by Parent is located on any premises not owned, leased or occupied by Parent. Except as set forth on Schedule 5.05, the assets owned, leased, or licensed by Parent constitute all of its assets.

Section 5.06. Parent Material Contracts.

(a) Schedule 5.06 lists each of the following Contracts of Parent (such Contracts, together with all Contracts concerning the occupancy of any real property, being "Parent Material Contracts"):

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- (i) each Contract of Parent involving aggregate consideration in excess of \$100,000 and which, in each case, cannot be cancelled by Parent without penalty or without more than 90 days' notice;
 - (ii) all Contracts that require Parent to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;
 - (iii) all Contracts that provide for the indemnification by Parent of any Person or the assumption of any Tax, Environmental Claim or other Liability of any Person;
 - (iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
 - (v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing or other consulting and advertising Contracts to which Parent is a party;
 - (vi) all agency Contracts to which Parent is a party;
 - (vii) all Contracts relating to Indebtedness for Borrowed Money (including, without limitation, guarantees) of Parent or relating to the grant of any Lien other than Permitted Liens on any asset of Parent;
 - (viii) all Contracts between Parent on the one hand and any Governmental Authority on the other hand;
 - (ix) any Contracts to which Parent is a party that provide for any joint venture, partnership or similar arrangement by Parent or the sharing of revenues between Parent and a third party;
 - (x) all Contracts between or among Parent on the one hand and stockholders of Parent or any Affiliate of stockholders of Parent on the other hand;
 - (xi) all Contracts, plans or arrangements providing for any bonus, stock option, stock ownership, stock purchase or stock appreciation right;
 - (xii) all collective bargaining agreements or Contracts with any labor organization, union or association to which Parent is a party;
 - (xiii) all Contracts for capital expenditures in excess of \$100,000; and
 - (xiv) any other Contract that is material to Parent, taken as a whole, and not previously disclosed pursuant to this Section 5.06.
- (b) Except as would not have, either individually or in the aggregate, a Material Adverse Effect on Parent, each Parent Material Contract is valid and binding on Parent, in

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accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium or similar Laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies and is in full force and effect. Parent is not in breach of, or default in any material respect of, any Parent Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute a material event of default under any Parent Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any material right or obligation or the loss of any material benefit thereunder. Complete and correct copies of each Parent Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been provided to Company.

Section 5.07. Absence of Conflicting Laws and Agreements. Except as set forth on Schedule 5.07, neither the execution, delivery or performance of this Agreement by each of Parent and Merger Sub, nor the consummation of the transactions contemplated by this Agreement, does, or will after the giving of notice or the lapse of time or otherwise:

- (a) conflict with, result in a breach of, or constitute a default under, the certificate of incorporation of Parent or Merger Sub or any Law, Governmental Order, or any Contract to which Parent or Merger Sub is a party or by which Parent or Merger Sub or its respective assets is bound;
- (b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any Governmental Authority; or
- (c) require the consent of any Person under any Parent Material Contract of any nature to which Parent or Merger Sub is a party to or by which it is bound.

Section 5.08. Real Property. The Parent does not own any real property.

Section 5.09. Leases. Schedule 5.09 sets forth a complete and accurate list of all of Parent's Leases of real property.

Section 5.10. Parent Financial Statements.

(a) Attached as Schedule 5.10(a) are true and complete copies of the unaudited balance sheet of Parent for year ended December 31, 2013 and the related statements of income and stockholders equity for the fiscal year then ended (the "**Parent Financial Statements**"). The Parent Financial Statements have been compiled in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(b) Attached as Schedule 5.10(b) is a true and complete copy of the unaudited consolidated balance sheet of Parent at September 30, 2014, and the related statement of income and stockholders equity for the period then ended (the "**Parent Interim Financial Statements**") as prepared by management of Parent.

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as per the order to produce records

Section 5.11. Absence of Undisclosed Liabilities.

(a) Parent does not have any Liabilities except: (i) those Liabilities reflected in the Parent Financial Statements and Parent Interim Financial Statements; (ii) Liabilities disclosed on Schedule 5.11(a); (iii) Liabilities incurred in the ordinary course of business since December 31, 2013; (iv) any transaction expenses incurred in connection with the Merger or this Agreement; (v) Liabilities and obligations incurred under or in accordance with this Agreement or in connection with the transactions contemplated hereby; and (vi) such other Liabilities as are not material individually or in the aggregate to Parent.

(b) Except as set forth on Schedule 5.11(b), Parent has not, by written instrument or otherwise, guaranteed the payment or collection or pledged any of its assets to secure payment of any unsatisfied indebtedness or other obligation of any Person.

Section 5.12. No Material Adverse Change. As of the date hereof, except as set forth on Schedule 5.12, since December 31, 2013, as to Parent, there has been no:

(a) Material Adverse Effect with respect to Parent nor any fact or condition in existence or threatened that would result in a Material Adverse Effect with respect to Parent;

(b) default under any indebtedness, or any event which with the lapse of time or the giving of notice, or both, would constitute such a default;

(c) declaration, setting aside or payment, directly or indirectly, of any cash or noncash dividend or other cash or noncash distribution in respect of any of the securities of Parent or any direct or indirect redemption, purchase or other acquisition of such securities (including but not limited to the Parent Common Stock, Series A Preferred Stock or other Equity Securities of Parent);

(d) material damage, destruction or loss, whether or not covered by insurance;

(e) increase in compensation payable or to become payable to any of the officers, directors or employees or any change in any bonus payment or arrangement made with any such Person, or any material change in personnel policies or benefits except in the ordinary course of business consistent with past practice or as otherwise required by applicable Law;

(f) Parent Material Contract, Parent Material Lease, commitment or transaction entered into or consummated except in the ordinary course of business consistent with past practice;

(g) amendment or termination of any Parent Material Contract or Parent Material Lease except in the ordinary course of business;

(h) extraordinary losses (whether or not covered by insurance) or waiver of any extraordinary rights of value with respect to, or affecting Parent's business;

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(i) sale, assignment, license, lease or other transfer or disposition (including any transfer to any Affiliate of Parent) of any of the assets except in the ordinary course of business or in connection with the acquisition of similar property or assets in the ordinary course of business;

(j) amendment to the articles of incorporation or bylaws or other organizational documents;

(k) commitment to or liability to any labor organization which represents, or proposes to represent, employees, or any strike, lockout, labor trouble or similar event or condition of any character involving employees of Parent;

(l) material change in the accounting methods or principles;

(m) any loan to, or entry into any other transaction with, any of its directors, officers and employees other than in the ordinary course of business;

(n) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(o) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law, or entering into by Parent or its stockholders of any agreement or contract other than this Agreement relating to the sale or transfer of any Parent Common Stock or other Equity Securities of Parent, or a change of control of Parent;

(p) imposition of any Lien (other than Permitted Liens) on any material asset;

(q) failure to maintain policies of insurance in effect or to give any notice or present any claim under any such policy when due;

(r) capital expenditure or commitment therefor in excess of \$100,000 other than for ordinary repairs or maintenance;

(s) as of the date hereof, no commitment for capital expenditures in excess of \$50,000;

(t) failure or refusal to make, in a timely manner, all material filings and declarations with and notices to Government Authorities; or

(u) agreement to do any of the foregoing.

Section 5.13. No Litigation; Labor Disputes; Compliance with Law. Except as set forth on Schedule 5.13:

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(a) as of the date hereof, there is no Action before or by any Governmental Authority or any third party, pending or threatened, to which Parent is a party. There are no outstanding injunctions, judgments or other Government Orders against Parent;

(b) Parent is not subject to or bound by any labor agreement or collective bargaining agreement and there is no material labor dispute, grievance, controversy, strike or request for union representation pending or threatened against Parent; and

(c) at all times, Parent has owned, carried on and conducted the Business in material compliance with Law and all Governmental Orders applicable to Parent.

Section 5.14. Taxes. Except as set forth on Schedule 5.14:

(a) Parent has duly and timely filed all required federal and state Tax Returns with the appropriate governmental agencies in all jurisdictions in which such returns and reports are required to be filed. All such Tax Returns are true and complete in all material respects and were prepared in compliance with all applicable Law. Parent has withheld and paid all Tax required to be withheld and paid in connection with any amounts paid or owing to an employee, independent contractor, creditor, stockholder, or other third party. All Taxes due and owing from Parent (whether or not shown on any Tax Return) have been fully paid. Parent is not currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where Parent does not file Tax Returns that Parent is or may be subject to taxation by that jurisdiction;

(b) Parent: (i) is not a party to or bound by, or have any obligation under, any Tax sharing or similar agreement; (ii) has not been a member of an Affiliated Group filing a consolidated federal income Tax Return or has any Liability for the payment of Taxes of any Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract or otherwise;

(c) no federal or state tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Parent. Parent has not received from any federal or state taxing authority any: (i) notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters; or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority against Parent. Schedule 5.14(c) lists all federal or state income Tax Returns filed with respect to Parent for taxable periods ended on December 31, 2013. No Tax Returns have been audited. Parent has delivered to Company correct and complete copies of its Federal and State income Tax Return, and reports for December 31, 2013;

(d) there are no Liens for Taxes (other than Permitted Liens) upon any of the assets or properties of Parent;

(e) Parent has not participated in any reportable transaction within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b) (or any similar provision of any Tax Law);

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(f) Parent has not distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code;

(g) Parent has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency; and

(h) Parent has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income tax within the meaning of Section 6662 of the Code.

Section 5.15. Employees. Schedule 5.15 is a true and complete list of all Employees of Parent as of the date hereof, which list identifies the name and position of each such Employee, and the following compensation information for fiscal years 2013 and 2014: (a) annual base salary; (b) annual bonus; (c) commissions; (d) perquisites; (e) severance; and (f) all other material items of compensation. Except as set forth on Schedule 5.15, there are no collective bargaining agreements, employment agreements, severance agreements, consulting agreements or independent contractor agreements to which Parent is a party which are not terminable at will without Liability. Except as set forth on Schedule 5.15, the consummation of the transactions contemplated under this Agreement will not cause Parent to incur or suffer any Liability relating to, or obligation to pay, severance, termination, or other payments to any Person or entity. Parent is in compliance in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and have not and are not engaged in any unfair labor practice; and no unfair labor practice complaint, employment discrimination complaint, wage and hour complaint, or occupational safety and health complaint against Parent is pending before any Government Authority, including the National Labor Relations Board or a similar governing body. Parent has paid or accrued on its balance sheet as of September 30, 2014 all compensation and benefits (including accrued vacation, sick leave or similar benefits) to any of Parent's employees.

Section 5.16. Employee Benefit Plans. Parent has not at any time established, maintained or been a party to or made contributions to any Employee Benefit Plan.

Section 5.17. Environmental Compliance.

(a) Parent is not currently nor has it formerly owned, operated or leased Real Property which is in the possession or control of the stockholders or Parent related to Environmental Permits, compliance with Environmental Laws, Environmental Claims, Environmental Notices or Releases of Hazardous Materials;

(b) The representations and warranties made pursuant to this Section 5.17 are the exclusive representations and warranties by Parent regarding (x) compliance with or liability under Environmental Laws or Environmental Permits, (y) Environmental Claims or Environmental Notices, or (z) Hazardous Materials.

Section 5.18. Affiliated Transactions. Except as provided in Schedule 5.18 hereto, no officer, director, stockholder, Employee, no family member of any of the foregoing, has any

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contractual relationship with Parent (other than as an Employee) or any direct or indirect interest in any customer, supplier or competitor of Parent, or in any other Person with whom Parent is doing business or otherwise has an agreement, arrangement or understanding, written or oral with Parent, whether in existence as of the date hereof or proposed, other than the ownership of stock of publicly traded corporations that does not exceed 1% of the issued and outstanding stock of such corporation.

Section 5.19. Brokers. Except as set forth on Schedule 5.19, neither this Agreement or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of, working for or representing Parent or Merger Sub as broker, finder, investment banker, financial advisor or in any similar capacity. The fees of such Person listed on Schedule 5.19 shall be paid and satisfied at Closing by Parent.

Section 5.20. Independent Investigation. Company has conducted its own independent investigation, review and analysis of Parent and acknowledges that Company has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Parent for such purpose. Company acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Company has relied solely upon (i) its own investigation and (ii) the express representations and warranties set forth in this Agreement (including the related portions of the Schedules) and in the other Transaction Documents; and (b) neither Parent or any other Person has made any other representation or warranty as to Parent.

Section 5.21. No Prior Merger Sub Operations. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.

Section 5.22. Reserved.

Section 5.23. Information Supplied. None of the information supplied (or to be supplied) in writing by or on behalf of Parent to Company or the Shareholders will, on the date it is first supplied or furnished, and at the time of the Closing, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Section 5.24. No Other Representations or Warranties. Except for the representations and warranties contained in this Article V (including the related portions of the Schedules) and in the other Transaction Documents, neither Parent or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Parent with respect to the transactions contemplated by this Agreement, including the Merger.

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ARTICLE VI CERTAIN MATTERS PENDING THE CLOSING

From and after the date of this Agreement and until the Closing (unless otherwise provided herein) Company shall comply with each of the following provisions:

Section 6.01. Access. Parent and its authorized agents, officers and representatives shall have reasonable access to Company to conduct such examination and investigation of the Business as it deems reasonably necessary, provided that such examinations shall be during the normal business hours of the Business and shall not unreasonably interfere with the Business's normal operations and activities of the Business. Without limiting the generality of the foregoing, Parent shall have full access to all employees of Company commencing no later than thirty (30) days prior to Closing to discuss transition and integration related matters and employment terms.

Section 6.02. Notice of Adverse Changes. Pending the Closing, Company shall give Parent prompt written notice of the occurrence of any of the following with respect to Company:

- (a) an Event of Loss involving individually or in the aggregate more than \$50,000;
- (b) the commencement or filing of any material Action;
- (c) any material labor grievance, strike, request for union representation, controversy or dispute materially affecting the business or operations of the Business;
- (d) any material violation by Company of any Law;
- (e) any written notice of breach, default, claimed default or termination of any Material Contract or Material Lease, other than any expiration of such Material Contract or Material Lease pursuant to its terms;
- (f) any Material Adverse Effect; or
- (g) the occurrence of an event which has had or reasonably could be expected to have a Material Adverse Effect.

Section 6.03. Operations Pending Closing. After the date hereof and prior to the Closing, except as otherwise provided in this Agreement or consented to in writing by the other party (which consent shall not be unreasonably withheld or delayed), each party shall (x) conduct their business in the ordinary course of business consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact the current organization, and to preserve the rights, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the party. Without limiting the foregoing, each party shall:

- (a) operate its business in accordance with applicable Laws;

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(b) maintain its properties and assets in good working order, ordinary wear and tear and usage excepted, and replace any of such assets which shall be worn out, broken, lost, stolen or destroyed, to the extent such assets would have been replaced in the ordinary course of business in accordance with past practices;

(c) not increase or otherwise change the rate or nature of the compensation (including wages, salaries and bonuses) which is paid or payable to any Person, and not enter into, renew or allow the renewal of, any employment agreement;

(d) defend and protect its material properties, Intellectual Property and assets from infringement or usurpation;

(e) maintain in full force and effect policies of liability and casualty insurance of substantially the same type, character and coverage as the policies currently carried with respect to the Business;

(f) not adopt, or commit to adopt, any Plan, Benefit Arrangement or other pension, profit sharing, deferred compensation or similar plan, program or trust on behalf of personnel of Company or modify the existing Employee Benefit Plans, other than in connection with the Merger of Parent and FMI or changes to existing plans in the ordinary course of business;

(g) make reasonable commercial efforts to protect the Business and its Intellectual Property Registrations;

(h) not acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business other than Parent's merger with FMI;

(i) not make or incur any capital expenditure in excess of \$100,000 individually or in the aggregate;

(j) not compromise or settle any material litigation to which such party is a party, nor waive or permit the loss of any right of material value, or cancel any debt or claim other than in the ordinary course of business consistent with past practice;

(k) perform in all material respects all Material Contracts and Material Leases;

(l) maintain books, records and accounts in accordance with past practice;

(m) not enter into or modify any Material Contract or Material Lease or other material commitment outside of the ordinary course of business;

(n) not make any changes in financial or tax accounting records, principles or practices except insofar as required due to a change in Law;

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(o) not dispose of any fixed asset with a replacement value in excess of \$25,000;

(p) not take any action that, if the action had been taken between January 1, 2014 and the date of this Agreement, would have been required to be disclosed on Schedule 4.14 or 5.12, and

(q) not enter into any transaction with an Affiliate.

Section 6.04. Financial Reports. Within thirty (30) days after the end of each month ending after the date hereof, Company will furnish Parent with a copy of the monthly financial reports of Company (each, a "Financial Report") prepared after the date of the Interim Financial Statements, including balance sheet ("**Most Recent Balance Sheet**") and operating statements, for each such month. All of the foregoing Financial Reports shall comply with the requirements concerning financial statements set forth in Section 4.12(b).

Section 6.05. Forbearances. Prior to Closing, neither Company nor Parent shall without first obtaining the prior written consent of the other:

(a) declare, set aside or pay any dividend or make any distribution with respect to its Equity Securities;

(b) directly or indirectly redeem, purchase or otherwise acquire or commit to acquire its Equity Securities;

(c) effect a split or reclassification of its capital stock or a recapitalization;

(d) change its certificate of incorporation, bylaws, or other governing instruments;

(e) Amend its certificate of incorporation or bylaws;

(f) Take any action that would or is reasonably likely to prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368 of the Code;

(g) Take any action that would materially alter the capitalization of Parent such that the capitalization of the Company would vary materially from the capitalization and debt outstanding at the Effective Time as set forth on Schedule 6.05(g), it being understood that the issuances of Series A Preferred Stock of Parent and convertible notes and common stock, in accordance with the capitalization described on Schedule 6.05(g) shall not require the consent of the Company;

(h) In the case of the Company, issue any Equity Securities or incur any Indebtedness, other than in the ordinary course of business; or

(i) Agree, commit or adopt any resolutions to do any of the foregoing.

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Section 6.06. Consents. Company shall use its commercially reasonable efforts (which will not require the payment of any monies) to obtain all consents and approvals from third Persons whose consent or approval is required with respect to the transactions contemplated hereby prior to the Closing Date.

Section 6.07. Cooperation; Commercially Reasonable Efforts. Subject to the terms and provisions of this Agreement, Parent, Merger Sub and Company will cooperate with each other and use (and shall cause each of their respective Affiliates to use) its commercially reasonable efforts to take, or cause to be taken, all actions, and so, or cause to be done, all things necessary, proper or advisable to cause the conditions to the Closing to be satisfied as promptly as practicable in all respects, including cooperation in connection with securing any nongovernmental approvals, consents, and waivers of third parties; and giving notices to any Governmental Authority, or securing the permission, approval, determination, consent or waiver of any Governmental Authority, required by Law in connection with the Merger.

Section 6.08. Release of Liens. Except for the Permitted Liens, at or prior to the Closing, Company shall obtain the release of all Liens disclosed in the Schedules hereto and any other Liens on the assets of Company and shall duly file releases or terminations of all such Liens in each governmental agency or office in which any such Lien or evidence thereof shall have been previously filed.

Section 6.09. Confidentiality; Public Announcement. During the period between the date hereof and the Closing, each party shall maintain the confidentiality of all information of a proprietary, secret or confidential nature of the other parties. No party hereto shall issue any press release or public announcement or, except as otherwise required in connection with obtaining any third party consent or in connection with obtaining financing for the transactions contemplated herein, otherwise divulge the existence of this Agreement or the transactions contemplated hereby without prior approval of the other parties hereto which shall not be unreasonably withheld, except as and to the extent that such party shall be obligated by Law, in which case the other party shall be so advised and the parties shall use their commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued. Notwithstanding anything to the contrary contained herein, it is understood that Parent may make a general announcement to the industry, customers and other current or prospective commercial parties regarding Parent's acquisition of the Business and the Merger under this Agreement and the Transaction Documents.

Section 6.10. Supplemental Schedules. Prior to Closing, Company shall, from time to time, by notice in accordance with this Agreement, supplement or amend Schedules or add additional Schedules to this Agreement, in order to set forth any matter first arising after the date hereof which could give rise to a breach of any representation or warranty herein contained provided that the matter which gave rise to such supplement, amendment or addition was not the result of a willful breach by Company of any representation or warranty or covenant hereof. If a supplement, amendment or addition of any Schedule sets forth a matter which absent such supplement, amendment or addition would give rise to a breach of any representation or

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warranty herein, then the aggregate Merger Consideration will be reduced by an amount agreed by Parent, Company and the Shareholders' Representative and, if such breach has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or if Parent, Company and the Shareholder's Representative do not agree to the amount of reduction of the aggregate Merger Consideration, Parent shall have the right, pursuant to Section 11.01 to terminate this Agreement. Such aggregate Merger Consideration reduction, if agreed to, or termination shall be Parent's and Merger Sub's sole remedy relating to matters set forth in amendments or supplements to any Schedule or addition of any Schedule permitted hereunder. Notwithstanding any other provision hereof but subject to the immediately preceding sentence, no supplement, amendment or addition of any Schedule will be effective to cure and correct any breach of any representation or warranty relating to such Schedule.

Section 6.11. Notice to Shareholders; Shareholder's Meeting. Between the date hereof and Closing, Company will give all notices and information (including, without limitation, those required under the Dissenters' Provisions) required by the Business Corporation Act to be given to the Shareholders in connection with this Agreement and/or the Merger, including the following:

(a) As soon as practicable after the execution of this Agreement, the Company shall prepare, with the cooperation of Parent, a solicitation statement for the solicitation of approval of the Shareholders of the Company describing this Agreement and the transactions contemplated hereby and thereby Parent shall provide such information about Parent as the Company shall reasonably request. The information supplied by the Company for inclusion in the solicitation statement to be sent to the Shareholders of the Company shall not, on the date the solicitation statement is first mailed to the Company's Shareholders or at the Effective Time, contain any statement that, as such time, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not false or misleading, or omit to state any material fact necessary to correct any statement in any earlier communication that has become false or misleading. Notwithstanding the foregoing, Company makes no representation, warranty or covenant with respect to any information supplied by Parent or Merger Sub that is contained in any of the foregoing documents.

(b) The solicitation statement shall constitute a disclosure document for the offer and issuance of shares of Parent's Series B Preferred Stock to be received by the holders of Company Capital Stock in the Merger. Parent and Company shall each use reasonable commercial efforts to cause the solicitation statement to comply with applicable federal and state securities laws requirements. Each of Parent and Company agrees to provide promptly to the other such information concerning its business and financial statements and affairs as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the solicitation statement or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in the preparation of the solicitation statement. Company will promptly advise Parent, and Parent will promptly advise Company, in writing if at any time prior to the Effective Time either Company or Parent shall obtain knowledge of any

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facts that might make it necessary or appropriate to amend or supplement the solicitation statement in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable law. The solicitation statement shall contain the recommendation of the Board of Directors of Company that the Company Shareholders approve the Merger and this Agreement and the conclusion of the Board of Directors that the terms and conditions of the Merger are fair and reasonable to the Shareholders of Company. Anything to the contrary contained herein notwithstanding, Company shall not include in the solicitation statement any information with respect to Parent or its affiliates or associates, the form and content of which information shall not have been approved by Parent prior to such inclusion.

Section 6.12. Approval of Shareholders. Company shall promptly after the date hereof take all action necessary in accordance with the Business Corporation Act and its Articles of Incorporation and Bylaws to obtain the majority vote (the "**Requisite Company Vote**") of the Company Shareholders to approve the Merger as soon as practicable. Company shall use its efforts to take all action necessary or advisable to secure the vote of Shareholders required to effect the Merger.

Section 6.13. Sale of Shares Pursuant to Regulation D. The parties hereto acknowledge and agree that the shares of Parent Series B Preferred Stock issuable to the Company Shareholders shall constitute "restricted securities" within the Securities Act. The certificates of Series B Preferred Stock shall bear the legends set forth in Section 2.05. Company will use its best efforts to cause each Company Shareholder to execute and deliver to Parent the Investor Representation Statement. It is acknowledged and understood that Parent is relying on the written representations made by each Shareholder of Company in the Investor Representation Statements.

ARTICLE VII TAX MATTERS

The following provisions shall govern the allocation of responsibility as between Parent, Merger Sub and the Shareholders for certain tax matters following the Closing Date.

Section 7.01. Tax Covenants. Without the prior written consent of Parent, Company shall not, to the extent it may affect, or relate to Company, make, change or rescind any Tax election, change an annual accounting period, adopt or change any accounting method, file an amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to Company, surrender any right to claim a refund of Taxes, consent to an extension or waiver of the limitation period applicable to any Tax claim or assessment relating to Company, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action would have the effect of increasing the Tax liability or reducing any Tax asset of Parent or Surviving Corporation or its Subsidiaries in respect of any Post-Closing Tax Period. Parent or Surviving Corporation shall prepare, or cause to be prepared all Tax Returns required to be filed for Company that are filed after the Closing Date with respect to Pre-Closing Tax Period.

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Section 7.02. Cooperation and Exchange of Information.

(a) Shareholders' Representative, Company, Parent and the Surviving Corporation shall provide each other with such cooperation and information as any of them reasonably may request of the other in filing any Tax Return pursuant to this Article VII or in connection with any audit, litigation or other proceeding in respect of Taxes of Company. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information (including but not limited to Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities) that are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Each of Shareholders' Representative, Company (after the Effective Time the Surviving Corporation), and Parent agree to retain all books and records with respect to Tax matters pertinent to Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and to the extent notified by Parent, the Surviving Corporation or Shareholders' Representative, any extension thereof) of the respective taxable periods and to abide by all record retention agreements entered into with any taxing authority. Prior to transferring, destroying or discarding any such books and records in its possession relating to Tax matters of Company for any taxable period beginning before the Closing Date, Shareholders' Representative or Parent (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

(b) Parent, Merger Sub, Company and Shareholders' Representative further agree, upon request, to use their best efforts to obtain any certificate or other document from any governmental authority or any of Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(c) Parent, Merger Sub, Company and Shareholders' Representative further agree, upon request, to provide the other Parties with all information that the other Party may be required to report pursuant to section 6043 or 6043A of the Code, or Treasury Regulations promulgated thereunder.

Section 7.03. Tax Elections. Parent covenants that, without the prior written consent of the Shareholders' Representative, which will not be unreasonably withheld, conditioned or delayed, it will not, and will not cause or permit Company (after the Effective Time the Surviving Corporation), or any Affiliate of Parent (except as required by applicable Law) to: (i) amend any Tax Return for any Pre-Closing Taxable Period; (ii) enter into any closing agreement or settle any Tax claim or assessment relating to Company for any Pre-Closing Taxable Period; (iii) extend or waive the limitation period applicable to any Tax claim or assessment for any Pre-Closing Taxable Period; or (iv) surrender any right to claim a refund of Taxes for any Pre-Closing Taxable Period, in each case if such action would reasonably be expected to have the effect of increasing the Tax liability or reducing any Tax benefit of Company or any Affiliate of Company; provided, however, that the provisions of this Section 7.03 shall not apply if no Claim

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for indemnification has been made prior to December 31, 2014 under Section 10.01 involving Taxes and if the Company has not filed an income Tax Return for the Pre-Closing Tax Period prior to December 31, 2014.

Section 7.04. Tax Refunds. Solely for income Taxes for Pre-Closing Taxable Periods for which Company is liable hereunder and provided that no Claim for indemnification has been made prior to December 31, 2014 involving income Taxes, and then only to the extent of such Claim, Parent shall promptly pay or cause prompt payment to be made to Shareholders' Representative, on behalf of Company (after the Effective Time the Surviving Corporation), within ten (10) days after receipt thereof by Company (after the Effective Time the Surviving Corporation) or any of its Subsidiaries, of all refunds of Taxes and interest (as received from the taxing jurisdiction) with regard to the carryback of tax attributes generated for tax years 2012 and 2013 (or that portion thereof falling into the Pre-Closing Tax Period) thereon received by, or credited against the Taxes of Company (but only to the extent that any such credit actually reduces the Taxes paid by Company (after the Effective Time the Surviving Corporation) for any Tax period (or the portion of any Straddle Period) beginning after the Closing Date. For the avoidance of doubt, this Section 7.04 is limited to carrybacks of net operating losses and investment tax credits generated in calendar years 2012 and 2013 (or that portion thereof falling into the Pre-Closing Tax Period). If the Shareholders' Representative determines that Company (after the Effective Time the Surviving Corporation) is entitled to file or make a formal or informal claim for refund or an amended Tax Return providing for a refund with respect to a taxable period ending on or before the Closing Date (and, in each case, solely with respect to a refund for which Parent or the Surviving Corporation are required to pay to the Shareholders' Representative pursuant to this Section 7.04), Parent will (so long as not inconsistent with applicable Law), if the Shareholders' Representative so requests and at the Shareholders' expense, cause the relevant entity to file or make such claim or amended Tax Return, including through the prosecution of any proceeding which the Shareholders' Representative reasonably directs such entity to pursue; provided, that no such claim, amended Tax Return or proceeding will have an adverse effect on Parent and its Affiliates (including the Surviving Corporation). Any such amended Tax Return, claim, or other filing shall be prepared in a manner consistent with past practice (unless otherwise required by Law), and without a change to any item that does not directly relate to the tax attribute carried back and, shall be submitted by Shareholders' Representative to Parent and the Surviving Corporation for approval and filing (together with schedules, statements and, to the extent requested by Parent, supporting documentation) at least 40 days prior to the due date of such Tax Return.

ARTICLE VIII CONDITIONS PRECEDENT TO OBLIGATIONS OF PARENT AND MERGER SUB

The obligations of Parent and Merger Sub to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:

Section 8.01. Compliance with Agreement. Company shall have performed and complied in all material respects with each of its obligations under this Agreement which are to be performed or complied with by Company prior to or at the Closing.

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Section 8.02. Proceedings and Instruments Satisfactory. All proceedings required to be taken by Company in connection with the performance of this Agreement, and all documents incident thereto, shall be complete in all material respects to the reasonable satisfaction of Parent and Parent's counsel, and Company shall have made available to Parent for examination the originals or true and correct copies of all documents which Parent may reasonably request in connection with the transactions contemplated by this Agreement and in order to establish the existence and good standings of Company and the due authorization of this Agreement and the transactions contemplated hereby. The Company shall have delivered the Financial Statements, together with an audit report, footnotes and schedules, prepared in accordance with GAAP.

Section 8.03. Representations and Warranties. The representations and warranties made by Company which are qualified in any respect as to materiality or Material Adverse Effect shall be true and correct as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date, except for changes permitted or contemplated by this Agreement; all other representations and warranties made by Company in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date, except for changes permitted or contemplated by this Agreement.

Section 8.04. Deliveries at Closing. Company shall have delivered or caused to be delivered to Parent the documents, each properly executed and dated as of the Closing Date, as required pursuant to this Agreement.

Section 8.05. Absence of Proceedings. No Action shall have been commenced against Parent, the Shareholders or Company, which seeks to prevent the Closing or to impose material damages against Parent, Merger Sub or any of their Affiliates as a result of the transactions contemplated by this Agreement and the other Transaction Documents and which in the opinion of counsel to Parent is reasonably likely to succeed. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

Section 8.06. No Liens; Title Report/Insurance. On the Closing Date and simultaneously with the Closing, there shall not be any Liens on the assets of Company, except Permitted Liens. If Parent elects, Merger Sub shall have obtained an owner's title policy covering the owned Real Property from the title company selected by the Parent in form reasonably satisfactory to Parent. Title to the owned Real Property at Closing shall be good and marketable and such as will be insured by the title company selected by Parent at its regular rates.

Section 8.07. Governmental Consents. All other authorizations, consents or approvals of any and all Governmental Authorities, if any, necessary in connection with the consummation of the transactions contemplated by this Agreement (including without limitation any such authorizations, consents or approvals necessary with respect to any Permit material to the operation of the Business of Company) shall have been obtained and be in full force and effect.

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Section 8.08. Good Standing Certificates. Company shall have delivered to Parent copies of the certificate of good standing of Company issued on or soon before the Closing Date by the Secretary of State (or comparable officer) of the jurisdiction of organization and jurisdiction in which each such Person is qualified to do business.

Section 8.09. Dissenting Shares. Shareholders holding not more than 10% of the Stock outstanding immediately prior to the Effective Time shall have demanded or indicated in writing an intent to demand appraisal of such shares of Stock under the Dissenters' Provisions.

Section 8.10. Bank Signature Cards. Company shall have delivered signature cards, duly executed by the current officers and/or authorized signatories of Company, transferring signing authority for the bank accounts of Company to Persons designated by Parent.

Section 8.11. Investor Representation Statement; Number of Shareholders. Each of the Company's Shareholders shall have delivered to Parent a signed Investor Representation Statement and each such Statement shall be in full force and effect, and there shall be not more than thirty-five (35) Company Shareholders who are both: (i) U.S. persons as defined under Regulation S under the Securities Act; and (ii) not "accredited investors" as defined in Rule 501 under the Securities Act.

Notwithstanding the above, if any of the conditions set forth in this Article VIII have not been satisfied, Parent may in its sole discretion elect to proceed with the consummation of the transactions contemplated hereby.

ARTICLE IX CONDITIONS PRECEDENT TO OBLIGATIONS OF COMPANY

Each and every obligation of Company to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:

Section 9.01. Compliance with Agreement. Each of Parent and Merger Sub shall have performed and complied in all material respect with all of its obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing.

Section 9.02. Proceedings and Instruments Satisfactory. All proceedings to be taken by each of Parent and Merger Sub in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall be complete to the reasonable satisfaction of Company and Company's counsel, and each of Parent or Merger Sub shall have made available to Company for examination the originals or true and correct copies of all documents which Company may reasonably request in connection with the transactions contemplated by this Agreement and in order to establish the existence and good standing of each of Parent and Merger Sub and the due authorization of this Agreement and the transactions contemplated hereby by each of Parent and Merger Sub.

Mark Hammond

Section 9.03. Representations and Warranties. The representations and warranties made by Parent and Merger Sub which are qualified in any respect as to materiality shall be true and correct as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date, except for changes permitted or contemplated by this Agreement; all other representations and warranties made by Parent and Merger Sub in this Agreement shall be true and correct in all material respects as of the Closing Date.

Section 9.04. Deliveries at Closing. Parent and Merger Sub shall have delivered or caused to be delivered to Company the documents, each properly executed and dated as of the Closing Date required pursuant to this Agreement. Parent shall also have paid the aggregate Merger Consideration in accordance with and to the extent required by Section 2.06.

Section 9.05. Employment Agreements. Company shall have executed and delivered to Steve Johnson, Ronald Young and Frank Patterson the Employment Agreements and the Noncompetition Agreements. Such Employment Agreements shall be in a form reasonably acceptable to such employees and shall provide that Parent and the Company shall remain obligated to pay such employees for any and all deferred compensation that is currently reflected on the Company's Financial Statements in accordance with the Company's existing payment obligations.

Section 9.06. Absence of Proceedings. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

Section 9.07. FMI Merger. Parent and FMI shall have closed the merger and transactions contemplated by that certain Agreement and Plan of Merger by and between FMI and Parent before or simultaneously with the Effective Time.

Section 9.08. Issuance of Stock Options. Parent shall have authorized the grant of the Replacement Options pursuant to its 2013 Equity Incentive Plan to the persons designated by the Company.

Section 9.09. Governmental Consents. All other material authorizations, consents or approvals of any and all Governmental Authorities, if any, necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

Section 9.10. Tax Free Reorganization. Counsel to the Company shall have delivered an opinion that the Merger qualifies as a tax-free reorganization under Code Section 368(a).

Notwithstanding the above, if any of the conditions set forth in this Article IX have not been satisfied, Company may nevertheless elect to proceed with the consummation of the transactions contemplated hereby.

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ARTICLE X FURTHER AGREEMENTS

Section 10.01. Access. For a period of five (5) years after the Closing Date (or such longer period as may be required by any Governmental Authority or ongoing litigation or in connection with any Action):

(a) Parent shall, and shall cause the Surviving Corporation to, use its reasonable efforts not to dispose of or destroy any of the business records and files with respect to Company. If Parent or the Surviving Corporation wishes to intentionally dispose of or destroy such records and files after that time, it shall attempt to first give thirty (30) days' prior written notice to Shareholders' Representative and Shareholders' Representative shall have the right, at his option and expense, upon prior written notice to Parent within such 30 day period, to take possession of the records and files within sixty (60) days after the date of the such notice to Shareholders' Representative.

(b) Parent shall, and shall cause the Surviving Corporation to, allow the Shareholders' Representative reasonable access to all business records and files with respect to Company pertaining to periods prior to the Closing Date, to the extent such records and files reasonably relate to a reasonable business purpose disclosed by the Shareholders' Representative to Parent, during regular business hours and upon reasonable notice at Parent's principal places of business or at any location where such records are stored, and Shareholders' Representative shall have the right, at his own expense, to make copies of any such records and files; provided, however, that any such access or copying shall be had or done in such a manner so as not to unreasonably interfere with the normal conduct of Parent's business and operations.

Section 10.02. Shareholders' Representative. Timothy Reed shall serve as the agent of the Shareholders (except such Shareholders, if any, as shall have perfected their dissenters' rights under the Business Corporation Act) (the "**Shareholders' Representative**") who shall be entitled to act on behalf of each of the Shareholders and for all purposes under this Agreement and the Indemnification Escrow Agreement, including without limitation, to agree to, negotiate and enter into settlements and compromises with respect to disputes arising under this Agreement as necessary or appropriate in the judgment of such Shareholders' Representative. Notices or communications to or from the Shareholders' Representative shall constitute notice to or from each of the Shareholders. If Reed resigns, dies or becomes incapacitated, Shareholders shall appoint Ronald Young as successor Shareholders' Representative, whereupon the successor Shareholders' Representative shall immediately deliver written notice to the Parent of his address and other contact information for purposes of Section 11.07. In no event shall Shareholders' Representative be liable to any Shareholders resulting from the performance of his duties hereunder or for any decision made in the performance of such duties and the Shareholders shall indemnify Shareholders' Representative against any losses suffered by Shareholders' Representative as a result of the performance of his duties hereunder.

Section 10.03. Employee Matters.

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(a) Company will use commercially reasonable efforts in consultation with Parent to retain existing employees of Company through the Effective Time and following the Merger. Company shall use its reasonable efforts to cause each of such employees set forth in Schedule 10.03 to cause each Company employee to execute and deliver to Parent a Proprietary Rights and Non-Disclosure Agreement. The Parent will use commercially reasonable efforts to acquire life insurance on certain key employees of Parent and Company in amounts satisfactory to the Board of Directors of Parent.

(b) Parent and Merger Sub shall ensure that, as of the Closing Date, each Employee of Company who is employed by Parent or one of its Subsidiaries after the Closing Date (each such Person, a "Continuing Employee" receives full credit (for all purposes, including eligibility to participate, vesting, vacation entitlement and severance benefits, but excluding benefit accrual under any defined benefit plan) for service with Company (or predecessor service credit under its employee benefit plans) under each of the comparable employee benefit plans, programs and policies of Parent or Company, in which such Continuing Employee becomes or may become a participant; provided, however, that no such service recognition shall result in any duplication of benefits. As of the Closing Date, Parent shall, or shall cause the Surviving Corporation to credit to Continuing Employees the amount of vacation time that such employees had accrued under any applicable Benefit Plan as of the Closing Date. With respect to each health or welfare benefit plan maintained by Parent, the Surviving Corporation for the benefit of any Continuing Employees, Parent shall use commercially reasonable efforts to: (i) cause to be waived any eligibility waiting periods, any evidence of insurability requirements and the application of any pre-existing condition limitations under such plan; and (ii) cause each Continuing Employee to be given credit under such plan for all amounts paid by such Continuing Employee under any similar Benefit Plan for the plan year that includes the Closing Date for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the applicable plan maintained by Parent, the Surviving Corporation, as applicable, for the plan year in which the Closing Date occurs.

(c) Nothing contained in this Agreement (including this Section 10.03) shall: (i) amend, or be deemed to amend, any Benefit Plan; (ii) provide any Person not a party to this Agreement with any right, benefit or remedy with regard to any Benefit Plan or a right to enforce any provision of this Agreement; (iii) limit in any way Parent's, Company's (after the Effective Time the Surviving Corporation) ability to amend or terminate any Benefit Plan at any time, subject to applicable Laws; or (iv) restrict Parent's, Company's (after the Effective Time the Surviving Corporation's) right at any time to, add to, change, modify, alter or discontinue terms and conditions of employment.

Section 10.04. Directors' and Officers' Insurance and Indemnification.

(a) From the Closing Date through the sixth (6th) anniversary of the Closing Date, the Surviving Corporation shall indemnify and hold harmless each Covered Person against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements (collectively,

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"Costs") for acts or omissions occurring at or prior to the Closing Date for and to the extent to which they would be entitled to be indemnified pursuant to the certificate of incorporation or bylaws of Company as they exist as of the date hereof (the "**Current Indemnity Provisions**"). With respect to any determination of whether a Covered Person is entitled to indemnification by the Surviving Corporation under this Section 10.04, the Covered Person shall have the right, as contemplated by the Business Corporation Act, to require that such determination be made by special, independent legal counsel selected by the Covered Person and approved by the Surviving Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), and who has not otherwise performed material services for Company within the last three (3) years. For purposes of this Agreement, each individual who is entitled to indemnification pursuant to the Current Indemnity Provisions shall be deemed to be a "**Covered Person**."

(b) For a period of six (6) years after the Closing Date, the respective certificates of incorporation and bylaws or similar organizational or governing documents of the Surviving Corporation and its Subsidiaries shall contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of Covered Persons for periods prior to and including the Closing Date than are currently set forth in the certificates of incorporation, bylaws, or similar organizational and governing documents of Company. From and after the Closing Date, Parent shall cause the Surviving Corporation and its Subsidiaries to honor, in accordance with their respective terms, the covenants contained in this Section 10.04.

(c) At or prior to Closing, Parent shall have purchased "tail" insurance on terms with respect to such coverage and amounts reasonably comparable to the directors and officers insurance maintained currently by Company, as applicable (the "**D&O Insurance**"). Until six (6) years after the Closing Date, Parent shall not, and shall cause the Surviving Corporation or its Subsidiaries not to take any action to terminate the D&O Insurance.

(d) If the Surviving Corporation or any of its successors or assigns: (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger; or (ii) transfers all or substantially all of its properties and assets to any Person, then and in each such case, Parent shall use commercially reasonable efforts to provide that such continuing or surviving corporation or entity or transferee of such assets, as the case may be, shall assume all of the applicable obligations set forth in this Section 10.04.

(e) The provisions of this Section 10.04 shall survive the Closing for six (6) years. The Covered Persons (and their successors and heirs) are intended third party beneficiaries of this Section 10.04 and this Section 10.04 shall not be amended in a manner that is adverse to the Covered Persons (including their successors and heirs) or terminated without the consent of the Covered Persons (including their successors and heirs) affected thereby.

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(f) Notwithstanding anything to the contrary provided herein, no Shareholder shall have any rights pursuant to this Section 10.04 and/or the D&O Insurance for any Claims asserted by a Parent Indemnitee pursuant to Article X hereof or that could have been asserted by a Parent Indemnitee but for the limitations set forth herein.

Section 10.05. Parent Guarantee. Parent shall cause Merger Sub to comply in all respects with each of the representations, warranties, covenants, obligations, agreements and undertakings made or required to be performed by Merger Sub in accordance with the terms of this Agreement, the Merger, and the other transactions set forth herein. As a material inducement to Company's willingness to enter into this Agreement and perform its obligations hereunder, Parent hereby unconditionally guarantees full performance and payment by Merger Sub of each of the covenants, obligations and undertakings required to be performed by Merger Sub under this Agreement, subject to all terms, conditions and limitations applicable thereto, and hereby represents, acknowledges and agrees that any such breach of any such representation and warranty or default in the performance of any such covenant, obligation, agreement or undertaking of Merger Sub shall also be deemed to be a breach or default of Parent, and Company shall have the right, exercisable in its sole discretion, to pursue any and all available remedies it may have arising out of any such breach or nonperformance directly against either or both of Parent and Merger Sub in the first instance. As applicable, references in this Section 10.05 to "Merger Sub" shall also include the Surviving Corporation following the Effective Time.

Section 10.06. Registration Rights Agreement. Shareholders of the Company receiving the Merger Consideration shall receive Registration Rights Agreement, applicable to the shares of Common Stock of Parent received by Shareholders on conversion of the Series B Preferred Stock.

Section 10.07 Funding Commitment. Parent and Company hereby agree that Parent shall continue to provide funding to Company on an as-needed basis in accordance with the schedule of payments to Company as set forth on Schedule 1.3 of that certain Stock Purchase Agreement, dated July 9, 2013, as amended. Provided, however, that Parent shall not be required to make any such payments (i) to the extent any that such payment has been made as of the date of this Agreement; (ii) there is no reasonable belief that the HVS device can perform as expected in a commercially viable way; or (iii) the United States Food and Drug Administration has made a final determination that the HVS device will not be approved for use and sale.

ARTICLE XI TERMINATION; MISCELLANEOUS

Section 11.01. Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date, as follows:

- (a) by mutual written agreement of Shareholders' Representative and Parent;
- (b) by Shareholders' Representative, if: (i) Parent or Merger Sub is then in material breach of this Agreement and such breach on the part of Parent or Merger Sub has

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not been cured within ten (10) days after receipt of written notice of such breach from Shareholders' Representative; (ii) all Parent's conditions to closing in Article VIII have been satisfied or waived (or not satisfied due to Parent's or Merger Subs breach of the Agreement or other failure to close); and (iii) Company is not then in material breach of the Agreement;

(c) by Parent, if: (i) Company is then in material breach of this Agreement and such breach on the part of Company has not been cured within ten (10) days after written notice of such breach from Parent; (ii) all of Company's conditions to closing in Article IX have been satisfied or waived (or not satisfied due to Company's breach of the Agreement or other failure to close); and (iii) neither Parent nor Merger Sub is then in material breach of the Agreement;

(d) by Parent or Shareholders' Representative in the event that: (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable;

(e) by either Parent or Shareholders' Representative if the Closing shall not have been consummated on or before February 28, 2015, provided that the terminating party is not in material breach of its representations, warranties or obligations under this Agreement and further provided that if either the Approval and Consent set forth in Section 8.06 is delayed beyond February 28, 2015 or if there is a delay in the satisfaction of the conditions set forth in Section 9.07, FMI Merger, the date may be extended by either Parent or Company as the case may be for a period of up to 90 days.

Section 11.02. Rights on Termination. If this Agreement is terminated pursuant to Section 11.01 above, then except as otherwise provided herein, all further obligations of the parties under or pursuant to this Agreement shall immediately terminate without further liability of any party to the other, provided, however, that nothing in this Section 11.02 shall relieve liability or obligations hereunder of any party (the "**Defaulting Party**") to the other party or parties on account of a breach of a covenant or agreement contained herein, or any misrepresentation or warranty contained herein by the Defaulting Party. In the case of such a breach or misrepresentation, in addition to any damages for which the Defaulting Party may be liable, the Defaulting Party shall reimburse the other party or parties for any expenses incurred by such party or parties in order to enforce its or their rights under this Agreement (including reasonable attorney's fees and expenses).

Section 11.03. Further Assurances. From time to time after the Closing Date, upon the reasonable request of any party hereto, the other party or parties hereto shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and take such further action as the requesting party may reasonably request in order to effectuate fully the purposes, terms and conditions of this Agreement.

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Section 11.04. Entire Agreement; Amendment; and Waivers. This Agreement and the other Transaction Documents constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein or made pursuant hereto. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

Section 11.05. Expenses. Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, Parent shall pay the fees and expenses of each of the parties respective counsel, accountants, consultants and other experts incident to the negotiation, drafting and execution of this Agreement and consummation of the transactions contemplated hereby.

Section 11.06. Benefit; Assignment. This Agreement shall be binding upon and shall inure to the benefit of and shall be enforceable by Parent, Merger Sub, Company, the Shareholders and their respective permitted successors and assigns. This Agreement (and any rights, obligation or liabilities hereunder) may not be assigned or delegated in whole or in part by any party without the prior written consent of the other party; provided, however, that Parent and Merger Sub may assign in whole or in part its rights, obligations or liabilities hereunder to an Affiliate of Parent or may make a collateral assignment thereof to any lender providing financing to Parent or Merger Sub in connection with the transactions contemplated hereby. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 11.07. Notices. All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given: (i) on the date of personal delivery to an officer of the other party; (ii) when sent by telecopy or facsimile machine to the number shown below on the date of such confirmed facsimile or telecopy transmission; or (iii) when properly deposited for delivery by a nationally-recognized commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested on the date that is two (2) days after the date set forth in the records of such delivery service or on the return receipt, and addressed as follows, unless and until either of such parties notifies the other in accordance with this Section of a change of address or change of telecopy number:

If to Company,

prior to Closing: CreatiVasc Medical, Inc.
330 East Coffee Street
Suite 4016
Greenville, South Carolina 29601
Attention: Timothy Reed
Telephone No.: (864) 242-4700

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With a copy to: Elizabeth Temple
Womble, Carlyle, Sandridge & Rice, LLP
Suite 400
550 South Main Street
Greenville, South Carolina 29601

If to the Shareholders post-Closing:

CreatiVasc Medical, Inc.
330 East Coffee Street
Suite 4016
Greenville, South Carolina 29601
Attention: Timothy Reed, Shareholders' Representative
Telephone No.: (864) 242-4700

If to Parent: Brookhaven Medical, Inc.
3050 Peachtree Road, Suite 370
Atlanta, Georgia 30305
Attention: John D. Feltman
Telecopy No.: (404) 467-9746
Telephone No.: (404) 931-6247

With a copy (which shall not constitute notice) to:

Robert E. Altenbach
3050 Peachtree Road, Suite 360
Atlanta, Georgia 30305
Telephone: 404.229.8618
Telecopy No.:

Section 11.08. Counterparts; Headings. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile or email (.pdf) transmission, and any such counterpart executed and delivered via facsimile or email (.pdf) transmission shall be deemed an original for all intents and purposes. The Table of Contents and Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

Section 11.09. Severability; Specific Performance. If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid or unenforceable, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby. The provisions of this Agreement shall be specifically enforceable.

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Section 11.10. No Reliance. Except as expressly provided in Sections 10.01, 10.02 and 11.04 hereof and for any assignees permitted by Section 11.06 of this Agreement, no third party is entitled to rely on any of the representations, warranties and agreements of Parent, Merger Sub or Company contained in this Agreement, and Parent, Merger Sub, Company and the Shareholders assume no liability to any third party because of any reliance on the representations, warranties and agreements of Parent, Merger Sub or Company contained in this Agreement.

Section 11.11. Judicial Interpretation. Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being agreed that the agents of each party have participated in the preparation hereof.

Section 11.12. Saturdays, Sundays and Legal Holidays. If the time period by which any acts or payments required hereunder must be performed or paid expires on a Saturday, Sunday or legal holiday on which banks located in Philadelphia, Pennsylvania are generally closed, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

Section 11.13. Tax Disclosure Authorization: Notwithstanding anything herein to the contrary, the parties (and each Affiliate and Person acting on behalf of any party) agree that each party (and each employee, representative, and other agent of such party) may disclose to any and all Persons, without limitation of any kind, the transaction's tax treatment and tax structure (as such terms are used in regulations promulgated under section 6011 of the Code) contemplated by this agreement and all materials of any kind (including opinions or other tax analyses) provided to such party or such Person relating to such tax treatment and tax structure, except to the extent necessary to comply with any applicable federal or state securities laws; provided, however, that such disclosure may not be made until the earlier of date of: (i) public announcement of discussions relating to the transaction; (ii) public announcement of the transaction; or (iii) execution of an agreement (with or without conditions) to enter into the transaction. This authorization is not intended to permit disclosure of any other information including (without limitation): (i) any portion of any materials to the extent not related to the transaction's tax treatment or tax structure; (ii) the identities of participants or potential participants; (iii) the existence or status of any negotiations; (iv) any pricing or financial information (except to the extent such pricing or financial information is related to the transaction's tax treatment or tax structure); or (v) any other term or detail not relevant to the transaction's tax treatment or the tax structure.

Section 11.14. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.

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Mark Hammett

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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[SIGNATURES APPEAR ON FOLLOWING PAGE]

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

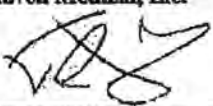
Feb 22 2025
REFERENCE ID: 1826734

Mark Hammond

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and
year first above written.

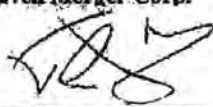
"PARENT"

Brookhaven Medical, Inc.

By: 
Name: John D. Feltman
Title: Chairman

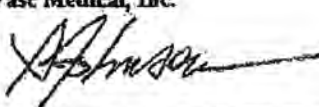
"MERGER SUB"

Brookhaven Merger Corp.

By: 
Name: John D. Feltman
Title: Chairman

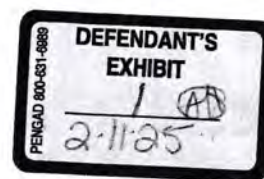
"COMPANY"

CreatiVasc Medical, Inc.

By: 
Name: Steve Johnson
Title: President & CEO

"SHAREHOLDERS' REPRESENTATIVE"


Timothy J. Reed



From: Tom O'Hanlan
Sent: Fri, 11 Sep 2015 15:51:29 +0000
To: sjohnson@creativasc.com
Cc: Frank Patterson; Lindsey Sanders
Subject: Re: CREATIVASC HEMOACCESS VALVE SYSTEM ACTUATOR STATUS

Guys- embarrassing at best. I have jumped on the team. I'll keep you abreast.
See next email. We will resolve these issues.
I'm sorry to have to hear this and respond accordingly.

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 11, 2015, at 10:40 AM, "sjohnson@creativasc.com" <sjohnson@creativasc.com> wrote:

Tom –

Hope your knee problem has been addressed. If not, I can bring a can of WD-40 over to you. How you get it in there is your business...

I know things are somewhat frantic at Sealevel but Frank showed me the latest yellow handheld actuator and charging cradle. Here's what happened when I tried it:

- a) When I turned on the handheld, it wobbled and shook my whole hand. Obviously, the motor/magnet head is not properly balanced or held in place because it was difficult to hold, not to mention couple to the implantable component.
- b) After less than a minute of activating it forward and backward, it just died. This came after charging it for some time...and it was dead after only several minutes of activation. Frank got back to crew there and first they conjectured it was the addition of the LED "charge indicator," which I had a hard time believing the addition of a single LED could be more than a miniscule drain on the system. Then I think the real issue emerged: the new higher-

torque motor is a significant drain on the circuit and power source. In addition, the new motor never got close to 1000 RPM, less than half of what we need and expected in the improved system over the blue "plug-in" prototype that was sent to me in Philadelphia last November, which is still the gold standard of performance. We have demonstrated it over and over again with no problems.

This now becomes critical because FDA got back to us this week indicating they would set a date for us to meet, likely over the next 2 weeks. We must have a working system. If nothing else, putting an inductive charging coil and base for the "blue" prototype is something I could live with to go to FDA. But my point is this: the real time clock on this game has now started with this week's communication from FDA. I cannot tell them "we can't come up because we aren't ready." That won't fly with the agency. Please let me know if you need resources to make the handheld and its charging system work.

As always, thanks for your support on this project...

Steve

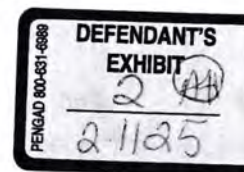
Steve Johnson
President & CEO, CreatiVasc Medical Inc.
President & COO, Brookhaven Medical Inc.

330 East Coffee Street, Suite 4016
Greenville, South Carolina 29601
864-242-4700 • Fax: 864-527-3153
Mobile: 864-380-8885



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ROA 875

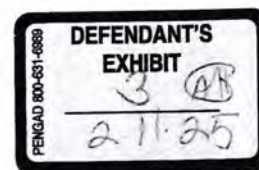


From: Tom O'Hanlan
Sent: Wed, 16 Sep 2015 15:37:45 -0400
To: Steven Johnson; Frank Patterson
Subject: Wand

Guys- I want to apologize for the state of this project. On one hand, things are fluid and informal, which we can both fix, but I don't have a good reason for the motor still not working.
I'm raising hell on my end. This won't happen again. Tony is working on a set of specs, statement of work (SOW), and somewhat formalizing how changes are handled.
Thank you-

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

ROA 876



From: Tom O'Hanlan
Sent: Fri, 18 Sep 2015 15:04:34 +0000
To: creativasc.com
Cc: Lindsey Sanders
Subject: Re: Creativasc

I'm embarrassed. I've had these issues with Tony before - no ownership- blame others.

I don't want to harp on that - I could've watched closer also.

Steve- we want to do this for a thousand good reasons. I'll make sure it doesn't fall behind again.

We might have to push you for an answer but that is better than pausing progress.

Enough said. Thank you--

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 18, 2015, at 7:56 AM, creativasc.com <sjohnson@creativasc.com> wrote:

Tom -

Just saw this. Thanks for your personal intervention. It will make a big difference. I am sure your team will now "stoke the fire."

In Dallas, headed home. See you next week...and thanks again.

Steve

Steve Johnson
Cell: 864-380-8885
Email: stevejohnson.cvm@gmail.com

Begin forwarded message:

From: Lindsey Sanders <lsanders@creativasc.com>
Date: September 17, 2015 at 1:37:08 PM CDT
To: Frank Patterson <pattersonfv@gmail.com>, Steve Johnson <sjohnson@creativasc.com>
Subject: FW: ***SPAM*** Re: ***SPAM*** Fwd: Creativasc

ROA 877

④

—
Lindsey K Sanders, PhD

From: Tom O'Hanlan
Date: Thursday, September 17, 2015 at 12:07 PM
To: Lindsey Sanders
Subject: ***SPAM*** Re: ***SPAM*** Fwd: Creativasc

Yeah- this shouldn't have happened. Please convey to Steve and Frank.
Thx

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Sep 17, 2015, at 10:51 AM, Lindsey Sanders
<lsanders@creativasc.com> wrote:

Thank you, Tom!!! Excited to see results.

—
Lindsey K Sanders, PhD

From: Tom O'Hanlan
Date: Thursday, September 17, 2015 at 9:30 AM
To: Lindsey Sanders
Subject: ***SPAM*** Fwd: Creativasc

FYI confidential. Start at bottom--

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

Begin forwarded message:

ROA 878

From: Antonio Martin
<tony.martin@sealevel.com>
Date: September 17, 2015 at 8:56:06 AM EDT
To: Tom O'Hanlan <tboh@sealevel.com>
Cc: Ben O'Hanlan
<ben.o'hanlan@sealevel.com>
Subject: RE: Creativasc

I will provide the requested specification today along with status update. All necessary resources will be deployed and I will drive this project to the completion of a wand that CreatiVasc can use first for their demonstration at the FDA, then onward for production. Greg Harrison will review the project as well. We will not stop our efforts on WiFi. We will deliver a WiFi product.

-----Original Message-----

From: Tom O'Hanlan
Sent: Thursday, September 17, 2015 8:30 AM
To: Antonio Martin
<tony.martin@sealevel.com>
Cc: Ben O'Hanlan
<ben.o'hanlan@sealevel.com>
Subject: Creativasc

Tony,
It's time you got in the game. You've avoided engaging fully on this project. Perhaps the lack of structure intimidates you.

I'd like daily status reports on progress here. We've been on it for a year and still don't have a motor turning a magnet. That is ridiculous. You say you don't know. Of course you don't, you only passively attend meetings and haven't pushed for completion of any of this.

I'd like Greg Harrison to look at and evaluate the project today for a few hours. It's your job to complete this with your resources- and you've got the largest department in the building.

While I'm on it- don't even think about not delivering WIFI. Again, you head the department and are paid well to ensure the

timely completion of projects with technology that works.

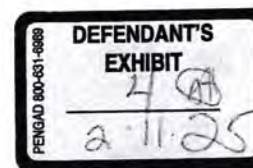
How things are tested and accepted is a concern. B&W perfect example.

Because we don't have a customer trying to break it (IT- one proto) doesn't mean we don't have to test and go beyond that. I want more prototypes- that's not new- I want the SOW and specs today.

Thank you-

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

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From: Steve Johnson
Sent: Mon, 26 Oct 2015 21:20:31 +0000
To: David Nichols; Charles Cox; charlie.jacobs@fmx.net; BrianMcMurray@atextechnologies.com; MarkJessup@atextechnologies.com; JohnDruga@atextechnologies.com; MichelleWallach@atextechnologies.com; StephanieNorris@atextechnologies.com; Tom O'Hanlan; Antonio Martin; Ben O'Hanlan; Thomas Walters; Jeremi Tigie; Jeff Hunter; tom.hogge@screwmatix.com; billy.hogge@screwmatix.com; ben.strawn@screwmatix.com; MrGeorge@supermagnetman.com; michaelkbrand@gmail.com; Andy Robinson
Cc: Frank Patterson; Lindsey Sanders; David L. Cull; 'Hugh Trout (hht trout@gmail.com)'; Ronald Young; John Feltman
Subject: CreatiVasc Meeting in Greenville - NEXT WEEK?
Importance: High
Categories: CreatiVasc

Everyone –

I just received an email from the FDA regarding our proposed meeting to show the HVS Generation 2 device components and get answers to the questions we have posed to the agency.

Earlier last week, Dorothy Abel, whom we have dealt with for over 8 years, indicated that she would target November 9th for our team meeting with FDA. In the meantime, the FDA team that will come up with responses to our list of questions on the Gen 2 HVS device indicates that the first time they can meet and be prepared with answers after December 9th. I am trying to get Drs. Trout and Cull who will both be at the Southern Surgical Association meeting on those very days. Needless to say, our meeting will be right around December 9th or just after it.

While we are concerned that this lack of quick turnaround could signal a return to "the old FDA" (as opposed to the Innovation Pathway FDA), it does give us a little breathing room to make sure all components of the Gen 2 HVS system are in perfect working order for our new December FDA meeting date. I am encouraging every team member to keep pushing to finalize and perfect the HVS Gen 2 system – but I don't want you to be working unnecessary nights and weekends now that a later FDA meeting date has been set.

On the other hand, please don't take your eye off the ball. To that end, we plan to have a "entire team meeting" here in our new offices next week. There have been numerous requests for all members to meet the other HVS development partners and better understand how all the components "fit together" and work to provide a total operating system. This will give us an opportunity to do that – now that the FDA meeting has been moved out 30 days.

Please check the schedule below and let me know if this can work for you:

- Tuesday afternoon, November 3rd: FMI and Atex (concentrating on the new, flatter FMI balloon design and how it fits into the Atex lumen)
- Wednesday morning – early afternoon November 4th: FMI, Atex, Sealevel Systems, Screwomatics and Super Magnet Man (for a review of all components and how they work together)

I think this could be a very exciting opportunity for everyone to meet each other and see how the various pieces of the "HVS puzzle" come together to form a remarkable technology. Let me know if these dates can work for you.

Thanks...

Steve

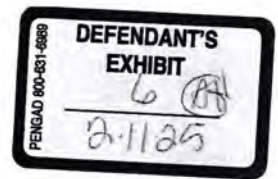
Steve Johnson
President & CEO, CreatiVasc Medical Inc.
President & COO, Brookhaven Medical Inc.

200 Patewood Drive, Building C, Suite 400
Greenville, South Carolina 29615
864-242-4700 • Cell: 864-380-8885



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ROA 882



From: Steve Johnson
Sent: Mon, 9 Nov 2015 14:33:14 +0000
To: Tom O'Hanlan; Antonio Martin; Jeff Hunter
Cc: 'Frank Patterson (pattersonfv@gmail.com)'; Lindsey Sanders
Subject: DEAD HANDHELD
Categories: CreatiVasc

Guys –

I took my car charger with me to Charleston last week to make sure the handheld would be charged to show Greg Hillman of SCLaunch. I had previously charged it the night before. The green light blinked all the way to Charleston. When I got out of the car, it was totally dead. I didn't show it to anyone.

Once I got home Friday night, I put it in the cradle to charge all night long again. I got a short time of blinking then nothing. Frank is getting it from me today after we go to Orangeburg to meet with Dr John Ross. He is bringing a new (charged up) rechargeable battery and we can continue to charge on the way down.

Is there a way to put a "dead kill" switch on the device from the battery to cut off all potential power drain? I don't know what causes this but it has been a persistent problem. While it looks great, I have not been able to demonstrate it because of its inability to charge.

Thanks...

SJ

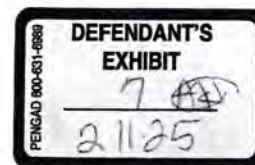
Steve Johnson
President & CEO, CreatiVasc Medical Inc.
President & COO, Brookhaven Medical Inc.

200 Patewood Drive, Building C, Suite 400
Greenville, South Carolina 29615
864-242-4700 • Cell: 864-380-8885



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ROA 884



From: Tom O'Hanlan
Sent: Wed, 3 Feb 2016 14:33:42 +0000
To: Steve Johnson
Subject: Re: CATCHING UP SINCE ST. BARTS!
Attachments: image002.jpg

Let's talk today. I wasn't aware that that is what you were told. We can incorporate the display - we offered it months ago.

We have discussed ergonomic design and I thought you were on board. I wasn't aware of the cost.

We don't have to do that step, or we can streamline the effort. But Steve- the iPod would not be what it is if Apple ENGINEERS designed the ergonomics.

An architect designs houses - not builders.

Let's talk. None of this is insurmountable. On the contract issue- let's let lawyers handle- it's not my area of expertise- and you know what our intents are- the devil is in the wording!

Thank you. When is it convenient to meet? Or call?

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Feb 2, 2016, at 6:23 PM, Steve Johnson <sjohnson@creativasc.com> wrote:

Tom –

Welcome back from St. Barts. I know it was a wonderful anniversary for you and Susan!

Lindsey forwarded your email from a week ago - expressing your concern about the pressure sensors. Glad you brought it up because we have similar concerns and are looking into several options for the system. I also have to tell you that I was more than a little surprised to hear that the plan to complete the handheld involved going to a third party in Minneapolis to get the digital display incorporated, redesign to make it more ergonomically user-friendly and easy to hold and use – at a cost of \$100,000. I was always under the impression that Sealevel could “relatively easily” incorporate a digital readout into the handheld as the final step once the sensors had been locked down. The third-party news not only adds significant expense but

additional time to completion. If the Minneapolis company basically completes the design of the device, where does that put Sealevel?

Also...I haven't heard anything back from your team or your attorney about the patent assignment and "we-can't-sell-anything-without-your-approval" addendum that was added to the Supply Agreement. Would love to get together to talk when you get caught up from your trip. Let me know a time and place – and I will try to work around it.

Feel free to call me as well: 864-380-8885.

Steve

Steve Johnson
President & CEO, CreatiVasc Medical Inc.
President & COO, Brookhaven Medical Inc.

200 Patewood Drive, Building C, Suite 400
Greenville, South Carolina 29615
864-242-4700 • Cell: 864-380-8885



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From: Lindsey Sanders
Sent: Wednesday, January 27, 2016 7:05 PM
To: Steve Johnson <sjohnson@creativasc.com>
Subject: Fwd: CreatiVasc Project Timeline

Note from Tom...

Sent from my iPhone

Begin forwarded message:

From: Tom O'Hanlan <tboh@sealevel.com>
Date: January 27, 2016 at 6:29:02 PM EST

ROA 886

To: Lindsey Sanders <lsanders@creativasc.com>

Subject: Re: CreatiVasc Project Timeline

I am in st Bart's until 2/1. I do have some concerns (still) about the lack of pressure sensor testing.

Let's talk then. Thanks

Tom O'Hanlan

CEO

Sealevel Systems Inc.

www.sealevel.com

864-843-4343

On Jan 21, 2016, at 5:36 PM, Lindsey Sanders

<lsanders@creativasc.com> wrote:

Sealevel Team,

Thank you for all of your hard work to date! In preparation for FDA testing, we have outlined next steps of device development. Below is a timeline for the next few months. Key dates are:

Until March 1 – Device Development: Incorporate pressure sensors, Add digital readout to handheld, Develop industrial handheld shell, Seal circuit board/electronics

March 1 – Device Design Freeze

March 1 – Device Build for FDA testing

April 1 – Start FDA testing

CreatiVasc is excited to see the progress we can make within the next few months. To meet these deadlines, we believe it will be beneficial to have weekly update calls – is there a day and time which works best for your team? Also, please let us know if you have any questions and/or concerns.

Lindsey K Sanders, PhD

Director of Technology and Commercialization

CreatiVasc Medical Inc.

Brookhaven Medical Inc.

200C Patewood Drive

Office 4127

Greenville, South Carolina 29615

864.242.4700 (o) 864.271.0557 (f)

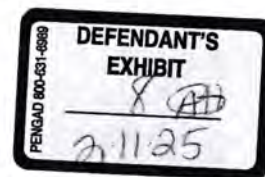
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ROA 888



From: Tom O'Hanlan
Sent: Tue, 9 Feb 2016 12:42:11 +0000
To: Steve Johnson
Subject: Re: WILD TOUGHT
Attachments: image001.png, image001.png

Steve- yes it could be done. But- I think the ultimate goal can also be accomplished. Why don't we have a sensor? Every idea has been shot down - many without empirical testing. I firmly believe that this whole concept can work. That's why we signed on.

I like Frank but I think he has been the naysayer or gate keeper on progress. We rely on him because we aren't in charge and defer to his assumed leadership role.

Steve- we do electronics well. Very well. We don't do chemistry- saline sensors, we don't do mechanical designs- Screwmatix. We don't do ergonomic design. But yet no one on your end is doing any of that either - except for Screwmatix.

I assumed that you would have someone knowledgeable about sensor and sensor testing. I can't certify that our pressure tester is built correctly- does pressure ramp up/down or is it pulsed min to max instantly? Frank should have a test setup AND have been talking to different vendors. He shot down Merit. Merit has the ONLY sensor close to working. So you reach out to them, spec it out and start testing. Tony has talked to the Merit people. It looks good. But CreatiVasc has to take ownership and perhaps commit to and pay for customization. We don't have that authority or ability.

Plus- we will stand behind the electronics- period- but who's your sensor guy? Not us - it's gotta be CreatiVasc. You took control of the implant pump and got Screwmatix. Success! Now you need the same thing with a sensor vendor.

Sorry to lecture. I believe in this and want to see it succeed.

Thanks- talk anytime. Cheers!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Feb 8, 2016, at 1:18 PM, Steve Johnson <sjohnson@creativasc.com> wrote:

I sent this to Frank this morning to consider. Love to hear your thoughts as well...

It appears that we are nearing the finish line except for a couple of major hurdles which have proven to be significant obstacles: specifically, a pressure sensor that is immune to saline exposure and is able to transmit pressure in

the system via the NFC chip to the handheld antenna and display it on a digital readout.

Along the development path, I seem to remember one option where, once sufficient torque resistance was met by the handheld, the motor would turn off. The resistance would be linked to the device's inability to pump more saline into the inflated balloons, triggering a motor shutdown. This system had no sensors, no NFC chip, no antenna and no digital readout.

If we cannot find appropriate sensors, or ones that can communicate the pressure reliably to the handheld, is the torque-resistance cut-off a potential fallback position? This move would:

- a) Eliminate the need for an "on-board" circuit board on the implantable.
- b) Eliminate the need for pressure sensors mounted on the implantable's board and sealed into the pump
- c) Eliminate the need for the NFC chip
- d) Eliminate the need for a pressure readout on the handheld
- e) Overcome the challenge of NFC/antenna coupling for pressure signal capture

Just a thought. If the torque can be read by the handheld board and turn the pumping off when we have met a certain torque resistance, this may be a reliable method to know if the balloons are inflated or not. For the inverse, you will know when the balloons are DEFLATED when the graft opens up to blood flow – and that can be felt with hand pressure on the graft and heard via a stethoscope.

The risk factors may actually go down with this approach. Example: what if a dialysis tech got an "8" pressure reading? Are the balloons inflated? Is it just a bad signal? Etc.

Just thinking of ways to move forward – in a different, simpler direction.

SJ

<image001.png>

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Steve Johnson
President & CEO, CreatiVasc Medical Inc.
President & COO, Brookhaven Medical Inc.

200 Patewood Drive, Building C, Suite 400
Greenville, South Carolina 29615
864-242-4700 • Cell: 864-380-8885



Steve Johnson
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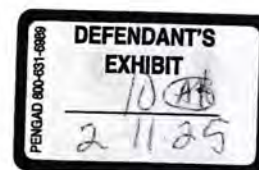


From: Tom O'Hanlan
Sent: Sun, 28 Aug 2016 21:42:41 +0000
To: David Cull
Subject: Re: CreatiVasc

Absolutely. I was supposed to but I never did talk to them. Sorry about that--
Let's schedule dinner- can include wives but may want to have more technical discussions???
Thank you!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

> On Aug 28, 2016, at 4:48 PM, David Cull <DCull@ghs.org> wrote:
>
> Tom,
>
> I just got off the phone with Steve Johnson to talk about an issue only indirectly related to the HVS. During the call I asked him what was going on with the new prototype system. He told me that the new technology (a sliding magnet mechanism) failed and he is back to using the technology you helped him develop. He suggested we get together for dinner sometime after Labor Day.
>
> David
>
> Sent from my iPhone



From: Tom O'Hanlan
Sent: Fri, 13 Jan 2017 00:21:23 +0000
To: Steve Johnson; Ben O'Hanlan
Cc: boh@sealevel.com
Subject: Re: GOT TIME TO TALK ON FRIDAY MORNING?
Attachments: image001.png

Steve- I'm open all afternoon--

Happy new year!

Tom O'Hanlan
CEO
Sealevel Systems Inc.
www.sealevel.com
864-843-4343

On Jan 12, 2017, at 6:03 PM, Steve Johnson <sjohnson@creativasc.com> wrote:

Hi Tom and Ben –

You see a very strange name below my name. CreatiVasc and Brookhaven Vascular are no more. This is just the tip of the iceberg of changes that happened over the last several weeks. Would you have time tomorrow (Friday) to get together and talk? I could do it anytime until around 2PM because I have a 3PM meeting here in Greenville.

Let me know if this could work...

Thanks.

SJ

Steve Johnson

200C Patewood Drive, Suite 4125
Greenville, South Carolina 29615
864-242-4700 • 864-380-8885

<image001.png>

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Timothy Bishop

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	EXHIBIT NO. <u>1</u>
	IDENTIFICATION EVIDENCE
	DKT.# <u>AP</u>
DATE: <u>2-11-25</u>	

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-23-04092

Sealevel Systems, Inc.,)
Plaintiff,)

vs.)

CreatiVasc Medical,)
Inc., Diaxamed, LLC,)
successor in interest)
to Brookhaven Vascular,)
Inc., Successor in)
interest to CreatiVasc)
Medical, Inc., John D.)
Feltman and James S.)
("Steve) Johnson,)
Defendants.)



30(B)(6) DEPOSITION

OF

SEALEVEL SYSTEMS, INC.

(Thomas O'Hanlan)

DATE: August 2, 2023

TIME: 10:20 a.m.

LOCATION: Wesley D. Few, LLC
416 East North Street, Second Floor
Greenville, South Carolina 29601

REPORTED

BY

SALLYE D. NELSON

ORIGINAL



ROA 896

803.749.8100
www.southernreporting.net

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EXHIBITS

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1 A Yes, sir.

2 Q So you've heard a good bit of these instructions,
3 but some of this is required by rules, so just bear
4 with me. Have you had your deposition taken
5 before?

6 A Not in this case, I mean...

7 Q But no, but --

8 A No.

9 Q -- ever in your life?

10 A One time I was a witness in a lawsuit in Easley,
11 about a hard drive, but it had nothing to do with
12 any of this.

13 Q Okay. Well, as you've discerned from that
14 experience and -- and being in present for John
15 Feltman and -- and Steve Johnsons' depositions,
16 deposition is just a chance for the lawyers in a
17 particular case to put the witnesses in that case
18 under oath and ask them questions, it's part of the
19 process that lawyers call discovery. Today we are
20 using a Rule of Civil Procedure that lawyers know
21 as Rule 30(B)(6), and that particular rule requires
22 a corporate party to be to designate one or more
23 people to testify on its behalf about certain
24 topics because, as you know, a corporate --
25 corporate body or party is, you know, is not a



1 Q -- because I'm thinking and at the same time I'm
2 talking. If you do answer a question that I pose
3 to you, I'll assume that you understood it; is that
4 fair?

5 A Uh-huh.

6 Q Now, if to -- to make sure that we have a good
7 clear record, I want to ask you to provide your
8 answers to my questions verbally, in other words,
9 yes, no, yellow, 1946, whatever the answer happens
10 to be, in a sufficient volume for our court
11 reporter to take down your answer. I may from time
12 to time prompt you because to give a verbal answer,
13 because you'd be surprise how much nonverbal
14 communication we human beings engage in from moment
15 to moment. We nod our heads. We say, "uh-huh or
16 uh-Your Honor." And we -- we often communicate
17 just by facial expressions and hand gestures. But
18 our court reporter is talking into that mask that
19 she is holding over her face, and she is repeating
20 everything that we say when we're on the record,
21 and she will print up the testimony that you give
22 in a little booklet.

23 A Okay.

24 Q And so that Mr. Few and I don't argue over whether
25 you said yes or no --



1 during that break you discuss the substance of your
2 testimony with Mr. Few or anybody else, our rules
3 allow me to inquire into the substance of that
4 conversation. The -- the -- the attorney client
5 privilege is in effect suspended, if you will,
6 while the deposition is going on in a manner of
7 speaking. And -- and I -- I -- I have no
8 intention, will not ask you any questions about
9 what you and Mr. Few have talked about to this
10 point. But I -- I'm required to give you that fair
11 warning --

12 A Okay.

13 Q -- and -- and I expect we won't have any -- any
14 issues there. All right. Any questions about
15 procedure before we get started?

16 A No, sir.

17 Q Okay. Are you under the influence of any
18 medication or substance or drug or anything that
19 would impact your ability to tell the truth,
20 understand my questions, or to provide testimony
21 here today?

22 A No, sir.

23 Q Okay. So just to start with, if you would, state
24 your full name for the record.

25 A Thomas Booker O'Hanlan.



1 Sealevel Systems was formed.

2 Q I see. Okay. We'll -- and I'll ask you more about
3 Sealevel Systems here in a minute. So who lives
4 with you at your address in Travelers Rest?

5 A My wife Susan.

6 Q And is her last name O'Hanlan?

7 A Susan O'Hanlan. Yes, sir.

8 Q And does she work?

9 A She runs Sealevel Systems now.

10 Q Okay. And -- and Sealevel Systems still its
11 principle place of business is in Pickens County?

12 A Yes, sir.

13 Q Okay. Does it have any offices in Greenville
14 County?

15 A No.

16 Q Have you ever been involved with or affiliated with
17 a business enterprise operating in Greenville
18 County?

19 A Do you mean Sealevel Systems or myself?

20 Q I kind of I'm asking really you, yourself.

21 A Before Sealevel I did some contract work for
22 textile companies, and I did some work for an
23 electronics company in Greer called Computer
24 Dynamics and designed some products for them that
25 became very successful.



1 my daughter, and then she has two children, 11 and
2 12.

3 Q Okay.

4 A And then my son Ben O'Hanlan is O'Hanlan.

5 Q And he works with you at Sealevel, correct?

6 A He did. He left three-and-a-half years ago to do
7 business on his own.

8 Q Okay. What -- what's -- what business is he in?

9 A Electronics. He's done similar work at Sealevel on
10 a smaller scale.

11 Q What's the name of the business?

12 A Brookgreen.

13 Q Okay.

14 A Yeah, I wanted to make sure it wasn't Brookhaven.
15 It's Brookgreen, either Enterprises or Brookgreen
16 Technologies.

17 Q Okay. All right. And where did you get your
18 education?

19 A Virginia Tech, I got a BS Degree in Electrical
20 Engineering Technology in 1978, and then prior to
21 that I'd gotten an associate degree in Electronics
22 from Blueridge Community College in Weyers Cave,
23 Virginia in 1976.

24 Q Okay. Any -- any postgraduate degrees obtained
25 anywhere in South Carolina?



1 right next to Rick Erwin's. It was one of the
2 first buildings done that kind of sparked a lot of
3 the renovation.

4 Q I see.

5 A Knox White used to walk in unannounced.

6 Q Okay. But that was a -- that was a part-time
7 residence.

8 A Yes. And I mean nothing to do with the business,
9 but it was a Greenville connection.

10 Q Okay.

11 A Yes, sir.

12 Q Thank you. That's helpful. Sealevel Systems you
13 said you formed in '86.

14 A Yes, sir.

15 Q And is it a South Carolina Corporation?

16 A Yes, sir.

17 Q And today, how many employees does Sealevel Systems
18 have?

19 A I believe 88.

20 Q And can you describe just one what are the -- the
21 general scope of its business?

22 A It'd be electronics, design, and manufacturing
23 services to Fortune 100 to 500 Companies, like L3,
24 Northrop Grumman, Raytheon, GE, Curtis Wright,
25 large military contractors, Harris Corporation. We



1 which would be called industrial control
2 communications products. And there are things that
3 you can go on our website and buy today to use in
4 your factory, maybe to talk to some controllers, or
5 to do some automation tasks. We build flatscreen
6 computers, communication devices, control devices
7 that area all off-the-shelf products.

8 Q Okay.

9 A So and -- and they do still sell very well to this
10 day, even though --

11 Q And does --

12 A -- some of them are older.

13 Q Does Sealevel Systems have any facilities other
14 than the -- the facility in Liberty?

15 A No, sir.

16 Q It's always operated out of the facility in
17 Liberty?

18 A Yes, sir. Well, I mean that building since 2006,
19 but we've always been in a building in Liberty.

20 Q Okay. Do you outsource any of the -- of the
21 manufacturing of particular components that go into
22 the systems that you're building?

23 A Yeah, that's a -- that's a complicated question.

24 So we -- we design a printed circuit board, which
25 is a flat piece of, you know, usually green or blue



1 today?

2 A Today, I would say a more advisory. I'm -- I call
3 myself semi-retired. I -- I'm not as needed as I
4 once was because of the day-to-day operations have
5 become so important. I was the idea guy and the
6 new idea guy. And so and again with my age and
7 with the company maturing as much as it is, I'm --
8 I'm not as involved in the more modern technology;
9 we have young engineers that -- that do a very good
10 job of keeping up with that, so...

11 Q Who -- who -- it's -- it's a corporation. Who are
12 the shareholders or the stockholders? Excuse me.

13 A My wife and I, Susan and I own the company. I was
14 set up initially with 67 percent of the stock and
15 she was 33 percent.

16 Q Okay.

17 A And we're the only shareholders.

18 Q Okay. Has Sealevel ever in the past gotten
19 involved in the sort of on the ground floor of
20 trying to develop a new product that -- that ended
21 up not working out?

22 MR. FEW: Object to the form.

23 EXAMINATION BY MR. SHEALY CONTINUED:

24 Q If you understand the question.

25 A I do. I -- I think that, tell me if this is



1 A Their approach, we did the hardware, which worked.
2 We found out that the police don't like GPS in
3 their cars. So the GPS wasn't turned on until the
4 blue light turned on. And then their idea was to
5 create a cloud computing platform and have an app
6 that you had to download to be notified. Our
7 approach to them was one, I use Waze. I know I'm
8 getting off on a tangent, just I --

9 Q No, that's --

10 A So -- so as a result of that their product failed.
11 And on a note, side note there, they wound up owing
12 us money, not a ton, but it was for work that we
13 had done in good faith, hoping this thing would go,
14 and then it ultimately failed for them. But 100
15 percent of the hardware we always delivered to
16 customers worked.

17 Q Okay.

18 MR. FEW: Hey, just for the record, I'm not
19 going to tell him not to answer anything. But some
20 of the stuff you and I will review later as to
21 confidentiality, but so just wanted to make that
22 note, and I think we have that's in the order
23 probably.

24 MR. SHEALY: And --

25 MR. FEW: I -- I hadn't heard anything that



1 okay. So obviously, this lawsuit concerns some
2 claims that Sealevel is making related to a
3 customer supply agreement that it entered into with
4 CreatiVasc Medical, Incorporated, correct?

5 A Yes, sir.

6 Q Okay. I'm going to show you and -- and I ended up
7 having only making --

8 MR. FEW: If you need to make copies, we -- we
9 can do that.

10 MR. SHEALY: Well, no. I have -- I have copy.
11 What -- what I have copies of is -- is -- is the --
12 the version of this that only has -- no. It does
13 have both copies -- no -- both signatures. I
14 thought -- I thought I had copied the wrong
15 version.

16 EXAMINATION BY MR. SHEALY CONTINUED:

17 Q Let me just show you this document and ask if you
18 can identify it.

19 A I would call this the Supply Agreement that is in
20 question.

21 Q Okay.

22 A That we put in place.

23 Q Okay. And it's dated October 28th, 2014, correct?

24 A Yes, sir.

25 Q And as I understand it, it is it has --



1 (DEFENDANTS' EXHIBIT NUMBER 2, 10/28/2014 CUSTOMER
2 SUPPLY AGREEMENT, MARKED, ATTACHED)

3 EXAMINATION BY MR. SHEALY CONTINUED:

4 Q And then there was, there were a couple of
5 amendments to that. Oh. Okay. There were a
6 couple of amendments to that, to Exhibit 2,
7 correct?

8 A Yes, sir.

9 Q Okay. I'll show you the document and ask if you
10 can identify it. Did you --

11 A Do I recognize it?

12 Q Do you, can you identify it?

13 A Yes, sir. This would be the first amendment to the
14 supply agreement.

15 Q All right. And it's a one-page document, correct?

16 A Yes, sir.

17 Q And it bears the signature of Steve Johnson again
18 on behalf of CreatiVasc Medical, and Ben O'Hanlan
19 on behalf of Sealevel Systems, correct?

20 A Yes, sir.

21 Q And it's dated October 28 -- no. I'm sorry. It's
22 the it's dated April 10, 2015, correct?

23 A Yes, sir.

24 Q Okay. All right. I mark that as Exhibit 3 to your
25 deposition.



1 the circumstances that led to the formation of
2 Exhibit 2. What, can you sort of just walk me
3 through how, you know, you'd got to know the folks
4 at CreatiVasc and -- and what led to you all
5 forming -- forming Exhibit 2?

6 A Yes, sir. We'd been involved, as I said, with some
7 other Clemson biomed type startups, or startups of
8 interest, Kiyatec being one of them. Another one
9 worth mentioning was a ring that is being developed
10 now I think by some folks related to this, but it
11 was an earring that would detect ovulation on a
12 woman. So --

13 Q Uh-huh.

14 A -- we had been dabbling in Clemson and Prisma
15 technology because we became known, I guess, as the
16 go-to guys to get technical solutions, if you will.

17 Q Okay.

18 A So it's my understanding that Steve Johnson got a
19 referral to us from Matt Gevaert, who had been with
20 Kiyatec, and said that these guys know electronics
21 and you should talk to them. So Steve Johnson
22 arranged a meeting and we had it at Sealevel. He
23 brought I believe Frank Patterson and a developer
24 from that had been a Clemson maybe master's or
25 doctorate student and had developed some pressure



1 Q Okay.

2 A And then they had like some previous patents and
3 things like that on the -- on the stage one or
4 phase one, whatever they called it.

5 Q Okay.

6 A But their goal was to make it an electronic implant
7 that would be controlled by a device that could
8 open or close the valve basically to do dialysis
9 and then close it and go home.

10 Q Right.

11 A And we were, I'll honestly say I was under the
12 ether thinking, you know, this is great, you know,
13 we can do this. We met Dr. Cull. It turned out
14 that my father and Dr. Cull's father had known each
15 other in Virginia.

16 Q That's C-u-l-l.

17 MR. FEW: Uh-huh.

18 A Yeah, I don't know how relevant that is. And then
19 Cull and my dad, my dad actually had performed
20 surgery on Dr. Cull.

21 EXAMINATION BY MR. SHEALY CONTINUED:

22 Q Really?

23 A Yeah. In Virginia, yeah.

24 Q And a small world.

25 A And so he reached out to me and said, "I can't



1 Q Right.

2 A -- right before he died I -- I actually talked to
3 Span America down here about licensing that
4 cushion. They built some prototypes and they
5 worked, but Span was in the foam business not the
6 cushion business.

7 Q Well, the -- the reason that I asked you if a if --
8 if a presentation, PowerPoint presentation they
9 made to you is we -- we -- we had not only that
10 this was produced to me or had this, but I want to
11 show you this is a looks like a slide deck, and I
12 just was asking, wanted to know if this looked
13 familiar to you.

14 MR. FEW: Everything you're doing is stuff
15 that's been produced, right?

16 MR. SHEALY: Correct. Correct.

17 MR. FEW: Yeah. Just if you happen to --

18 MR. SHEALY: Yeah, the -- the -- the Bates
19 numbers on this, this is not, this -- this does not
20 have the Bates numbers on them. But the -- the
21 Bates numbers on the set that was produced are you
22 can't see them because they're covered up by the --

23 MR. FEW: By the black.

24 MR. SHEALY: -- the black.

25 MR. FEW: Yeah, I've had some trouble printing



1 MR. FEW: One more I think, Kirby.

2 A Are -- are you here?

3 EXAMINATION BY MR. SHEALY CONTINUED:

4 Q Yeah.

5 A -- you're there. You're there. Yes, sir.

6 Q Yeah.

7 A So my -- my disagreement is -- is, one, look at the
8 date of this; but two, there's no way they could,
9 this slide could have been in there, because that's
10 the case we built, the motor and the circuit board
11 that we built for the wand.

12 Q Okay. All right. Well, I -- I'm just going to
13 mark this for identification as Exhibit 5 but
14 understanding that you don't recall seeing it.

15 (DEFENDANTS' EXHIBIT NUMBER 5, POWERPOINT
16 PRESENTATION, MARKED, ATTACHED)

17 A But again, I have to make note of the -- the
18 pictures conflicting with the date. Here's another
19 one, that -- that thing didn't exist --

20 EXAMINATION BY MR. SHEALY CONTINUED:

21 Q And so your --

22 A -- on September 14th. I'm sorry. I'm on -- since
23 there are no page numbers, I'm after BMW 750.

24 Q Okay. And again, I'd -- I'm -- I -- I can't tell
25 you anything about this other than it appeared in -



1 EXAMINATION BY MR. SHEALY CONTINUED:

2 Q Right. Okay.

3 A So the two were, you know, had to talk.

4 Q Right. Okay. All right. So going, looking at
5 Exhibit 2, so this Exhibit 2 was -- was developed,
6 drafted by Sealevel's lawyers, correct?

7 A Yes, sir.

8 Q Okay. And the exhibits to Exhibit 2, or the
9 exhibit pages to Exhibit 2, appear after the
10 signature page on page 10. And Exhibit A is
11 entitled Specifications, and it says, "See
12 attached." But I don't -- I did not see any
13 specifications attached to Exhibit 2. Do you -- do
14 you have any understanding that any specifications
15 were actually attached to Exhibit 2?

16 A I can't say that they were attached. I think the
17 specification was being developed jointly. They're
18 -- they're -- they're telling us we want it to do
19 this; and we're saying, "You can't do that, but you
20 can do this."

21 Q Okay.

22 A So I think the specification in its broadest sense
23 would apply to what they showed us that day.

24 Q Okay.

25 A Which -- which you'd asked about this, but and they



1 A No, sir.

2 Q Okay.

3 A That's we wouldn't have developed a special
4 purchase order. I mean, because they're just, you
5 know, a piece of paper to say want to be delivery -
6 -

7 Q Okay.

8 A -- part number, so...

9 Q Exhibit C indicate is says a form of invoice is
10 attached. Do you -- do you recall any form of
11 invoice being developed and attached to Exhibit 2?

12 A No, sir. Again, I think these are placeholders.

13 Q Okay. And again, Exhibit D says calls for a form
14 of quotation, and it says see attached, and then
15 there's a blank line. Did you recall a form of
16 quotation being attached, being developed and
17 attached to Exhibit 2?

18 A No, sir. Same -- same answer.

19 Q All right. Exhibit E though, contains language,
20 well, warranty language. And if I've read this
21 correctly, this was a this is the -- the -- the
22 warranty the parties anticipated that the -- the
23 device that was being developed would carry; is
24 that right?

25 A Yes, sir.



1 Q All right. So -- so tell me the -- the timeframe
2 first that that order for six wands came about.

3 A I believe it was late '16, 2016.

4 Q Okay.

5 A And we've got an email that -- that references that
6 in -- in our notes, but basically it says that
7 Frank Patterson had placed an order with us for six
8 wands. And then our I think our attorney Nichole
9 Andrighetti, or whatever her name is now, was say,
10 "Hey," -- was saying, "Well, how does Sealevel
11 proceed?" And she was writing to I believe Johnson
12 and possibly the folks in Raleigh at the time.
13 Because we -- we didn't understand the total
14 ownership and how it transpired that Raleigh or
15 ATEX came about, they -- we weren't privy to any of
16 those conversations. So again, we -- we did our
17 work. We thought everything was going great. They
18 had demonstratable small-implanted electronics. We
19 had the wand. They made jokes about traveling with
20 the wand, because it -- it looked like a personal
21 massaging device, for the record. We I mean up --
22 up until we were informed that, you know, you're no
23 longer part of this operation, persona non grata,
24 we operated under good faith that everything was
25 working, and we -- we never received notice that



1 mean, they -- they liked what we had done. They
2 said, "Now let's, you know, get six of them, and
3 we'll do some field testing." There'd been one
4 initial problem and that was the battery, as was
5 pointed out in the previous deposition. I would
6 venture that every product ever developed had a
7 battery charging issue the first time, because you
8 don't know how long the battery's going to last
9 'til you build the product. So --

10 Q Okay.

11 A -- we were rushed by Steve Johnson to take one up
12 to DC or to the FDA, and so that's the one that,
13 you know, he said the battery died on. Well, I
14 mean, you know, it came from literally the lab,
15 into his hands, onto an airplane.

16 Q Okay. Okay. So after Exhibit 2 was developed,
17 then Exhibit -- Exhibit 3 was entered into just a
18 few months later, approximately six months later.
19 Do you remember why there was this amendment set
20 forth in Exhibit 3 to the customer supply agreement
21 set forth in Exhibit 2?

22 A I'd have to look at the two side-by-side and
23 compare them. I mean I -- I think you can see that
24 it -- it -- it does highlight these as far as
25 specific patent rights.



1 Exhibit 3 was entered into?

2 MR. FEW: Object to the form.

3 A Without actually sitting here and reading the two,
4 I would have a hard time --

5 EXAMINATION BY MR. SHEALY CONTINUED:

6 Q Okay.

7 A -- just saying yes.

8 Q Okay. Now, Exhibit 4 was entered into about nine -
9 - I mean I'm sorry -- about 11 months after Exhibit
10 3, and yet another section was added to the
11 original customer supply agreement set forth in
12 Exhibit 2 that described pending patent
13 applications; do you remember the circumstances
14 giving rise to the second amendment that's set
15 forth in Defendants' Exhibit 4?

16 A This would be 6C on this page?

17 Q Yes, sir.

18 A Let me just go through. Bear with me one second,
19 please. I'm -- I'm reading this, and it says,
20 "Customer agrees to cancel any claims contained in
21 the application directed to Sealevel contribution."
22 We, Sealevel, myself, came up with the near field
23 communication system --

24 Q Right.

25 A -- that was part of this. They were when they'd



1 A I went along with it to I guess be a team player.
2 I -- I wasn't seeking personal fame or my -- you
3 know, I know guys with patents that line their
4 walls; I'm not one of those guys, I've got a couple
5 but they're -- they're all worthless. And so some
6 of this stuff just honestly -- and maybe I
7 shouldn't say this -- seemed like gobbledygook, but
8 I trusted our lawyers and --

9 Q Okay.

10 A -- that we were doing the right thing.

11 Q Now -- now, I -- I will tell you what my
12 understanding is, only to see if it comports with
13 your understanding, and if it doesn't, it doesn't.

14 A Okay.

15 Q As I understand Exhibit 4, the what was essentially
16 happening, is the extent to which Sealevel's
17 intellectual property was had been was being
18 incorporated into the development of this, that the
19 it -- it was being basically added to the claim so
20 that its -- so that its intellectual property would
21 be protected in addition to intellectual property
22 being claimed by CreatiVasc; does that comport with
23 your understanding?

24 MR. FEW: Object to the form.

25 THE DEPONENT: Okay.



1 A Well, my name was removed from the patent, for one
2 thing. The name Thomas B. O'Hanlan was taken off,
3 which I -- I mean I don't know if this spelled that
4 out or not.

5 Q Okay.

6 A I had objection to that later once I found out what
7 it all had been done. Frankly, I'll take this
8 opportunity to say I feel like I was ghosted.
9 Ghosted meaning somebody saw what Sealevel was
10 doing with CreatiVasc and decided that, A, it was
11 all working. I want to counter the claims that
12 John Feltman made and Steve -- Steve Johnson made
13 that the -- the whole deal died because Sealevel
14 didn't deliver a workable product, that is patently
15 untrue. Mr. Feltman, I believe, was told that.
16 Mr. Johnson knew the truth. They wanted more
17 wants, that you can't find a single email that
18 disparages the work we did. You can't find a
19 single email that says, "Y'all screwed this up, we
20 want to stop." There's three clauses for
21 termination of this contract, none of them were
22 met, none of them were broached, none of them were
23 even discussed. So to my knowledge the contract's
24 still in effect with somebody, but we performed
25 like we performed everything, Mr. Shealy.



1 perception of what happened, do have any -- do you
2 have any evidence that this product being
3 developed, the -- the subject of Exhibit --
4 Exhibits 2 through 4, has been developed, marketed,
5 and sold by anyone?

6 A No, sir.

7 Q Okay.

8 A That's I don't believe it has. I'm not sure of the
9 status of what happened after the ATEX acquisition
10 because nobody shared any of that information.

11 Q Okay. But -- but -- but that you've not heard or
12 seen --

13 A Oh, no.

14 Q -- anything about this, the -- the -- the product
15 that's was the subject of Exhibits 2 through 4
16 being actually put on the market.

17 A It would be a breakthrough if it had been.

18 Q Okay.

19 A And -- and frankly, that's what motivated me.

20 Q Okay. Are so, you know, after the relationship, I
21 -- I will -- I will -- I will go back in time a
22 little bit, but -- but you -- you brought up a few
23 things that I want to kind of follow up on. After
24 the relationship seemed to break down, and that was
25 in late 2016, correct?



1 say, "Hey, we've done all this work." It was
2 hundreds of thousands of dollars' worth of work for
3 engineering time, and then if you add my time and
4 other time it -- it, you know, became several
5 hundred thousand dollars or more. So the invoice
6 was sent as an attempt to get their attention and
7 just say, "Hey, what about us?" I mean honestly,
8 it was like but you -- you know a date didn't show
9 up and -- and you're still sitting at the
10 restaurant.

11 Q But you'd agree with me that Exhibits 2 through 4
12 don't contain any provisions that require
13 CreatiVasc or any -- any entity that standing in
14 CreatiVasc's shoes to pay Sealevel for its
15 engineering time?

16 MR. FEW: Object to the form.

17 A I would agree with that as stated, but the contract
18 does provide for the exclusive rights to
19 manufacture the product. So that's how a lot of
20 companies make their money is you forego the front-
21 end cost in exchange for the manufacturing rights
22 in anticipation that it's going to be a high
23 volume, a profitable venture.

24 EXAMINATION BY MR. SHEALY CONTINUED:

25 Q Sure. And -- and so but as you've -- as you've



1 Q So your invoice was -- I -- I meant I didn't --
2 A A summary of the work we had done because it
3 appeared that they were terminating our work
4 without even notification. There was, you know,
5 they -- they didn't write to us and say, "We don't
6 need you anymore." They did write to us and say,
7 "Diaxamed is now, you know, in charge of the whole
8 development process, so your -- your work while
9 appreciated is not required." We -- we received no
10 notification.

11 Q I mean if you received notification today from
12 CreatiVasc or some entity, some successor to
13 CreatiVasc, that it considers the Exhibit 2 as
14 amended by Exhibits 3 and 4 to be terminated, what
15 -- what significance would that have to -- to you
16 sitting here today?

17 MR. FEW: Object to the form.

18 A If it had happened in the normal course of
19 business, then I would agree that we would have no
20 recourse. We entered into this in good faith,
21 thinking that we were all developing a product.
22 You asked earlier about when the relationship
23 soured. I think -- I think we're going to discuss
24 or uncover some what I would consider fraud about
25 who knew about the supply agreement. If you



1 just having a conversation with --

2 A Right.

3 Q -- you as it is, you know, me asking the questions
4 and -- and -- and --

5 MR. SHEALY: And Wes, I will accept the --

6 MR. FEW: -- forthcoming objection?

7 MR. SHEALY: -- the forthcoming objections,
8 yes.

9 EXAMINATION BY MR. SHEALY CONTINUED:

10 Q But I mean given -- given that, that -- that
11 there's no obligation to purchase any products,
12 what does it matter to John Feltman whether this
13 exists or not?

14 MR. FEW: And I have an objection to that as
15 well.

16 A I'm not a lawyer but I feel like the -- the fact
17 that it does contractually obligate them to the
18 manufacturer of a joint developed product is an
19 obligation, I mean they -- they wouldn't have
20 signed it and we wouldn't have proposed it, it
21 says, and you agree to buy 1,000 of them the first
22 year. Sealevel's done a number of these things.
23 And, A, we've never gotten stiffed, per se, for no
24 reason. Again, sir, the lack of communication here
25 and again, what -- what -- what we haven't



1 Q Okay.

2 A I was getting ready to go out of town, I signed it,
3 and left it on my desk. This is my sworn
4 testimony. Told my assistant, who was also out of
5 town, that if I called and said, "Send this over,"
6 then send it over. When I got back into town my
7 assistant told me that somebody from the law firm
8 had called several times that week, said they need
9 Tom's assignment right away, and she sent it to
10 Jason Jennings at Dority Manning.

11 Q Okay.

12 A All right. Jason Jennings, three days after he
13 sent that, was informed by Nichole Hayden that Tom
14 assigns to Sealevel per the agreement, Tom is not
15 an employee of CreatiVasc, and Tom will not assign
16 to Sealevel. All right. Unbeknownst to Nichole,
17 at the time Jason had already received my signed
18 assignment, sat on it for eight months, and then
19 submitted it to the patent office.

20 Q And okay.

21 A So he knew that I didn't sign that. He knew that -
22 - that he received it from my assistant, by calling
23 my office, which we have the phone records. Okay.
24 So my intent was not to assign. Nichole called
25 him, and we have the emails three days later that

1 A Yes, sir. This says assign to Sealevel, they knew
2 that all along. All right. But yet he's taking me
3 to dinner saying, "I really need for you to sign to
4 CreatiVasc." And I'm like, "Steve, my attorney's
5 already told you we can't do that." Jason Jennings
6 is sitting on a signed copy of the assignment, that
7 again when I told my assistant that, she started
8 crying, and she said, "I can't believe that, Tom."
9 And she said, she said, "I thought I was supposed
10 to send it or something." I said, "Well, don't
11 worry about it." But you know --

12 Q Okay.

13 A -- it's done. So then that's why when both Mr.
14 Malkovich -- oh, not Malkovich -- Karmilovich to
15 look into the whole patent issue and what was done
16 to, A, the assignment and, B, with taking my name
17 off.

18 Q So but alright. Did -- did is it you're
19 understanding that Exhibit -- then Exhibit 4 that
20 was apparently submitted by Jeffrey Karmilovich --

21 A Yes, sir.

22 Q -- fixed that problem?

23 MR. FEW: Object to the form.

24 A I -- I believe that it did.

25 EXAMINATION BY MR. SHEALY CONTINUED:



1 --

2 Q Right.

3 A -- and what could actually be done. It was the
4 first time we'd honestly worked on an implant,
5 implantable device, so there was a lot of things we
6 had to learn. But also CreatiVasc had, you know,
7 Steve, Frank, and other resources that were more
8 knowledgeable on implants than we were. Our -- our
9 forte' is electronics, and so we didn't try to step
10 outside of that or claim that we knew more than we
11 did. So we proposed the idea of RFID as a battery-
12 less, battery-less sensor technology.

13 Q Right.

14 A We got some sensors in-house, started playing. We
15 developed a prototype for the wand, hand-held unit,
16 it looked like a small massager type thing.

17 Q Right.

18 A We had that 3D printed. It wasn't the final design
19 by any stretch. Because we kept asking them, "What
20 buttons do you want? What LEDs do you want for the
21 thing? You know, again, forming the design spec so
22 we had an overall picture at the end, but how do
23 you get there and what are the -- the things that
24 the wand does, what are the things the implant does
25 were still to be defined. We hooked them up with a



1 A The gear pump looked like an impeller, like on your
2 boat, that kind of just a couple of gears but as
3 you spin them fluid gets -- gets pushed through.

4 Q Right. Okay. So -- so there's a magnet on the
5 gear pump. There's also a magnet in the wand.

6 A Yes, sir.

7 Q And it's the interaction of those magnets that
8 causes a mechanical --

9 A -- transference of power.

10 Q Yes.

11 A I'm sorry. I didn't wait for you, but.

12 Q No. Good. No, you're that seems you're helping
13 things.

14 A Kind of like in chemistry in high school, remember
15 you'd mix two chemicals and put a magnet, like it
16 looks like a pill, and then something under it
17 would spin that magnet and it would stir the two
18 chemicals without --

19 Q Right.

20 A -- you having to touch them and things like that,
21 so it's similar in concept to that. We started
22 looking at sensors and sensors suppliers. There
23 was a requirement that saline be used to flush the
24 fistula after the blood was transfused or formed by
25 the dialysis. And so we were in search of a



1 right?

2 A Yeah.

3 Q Not -- not the -- not the machine.

4 A No. It's, no. But what -- what he meant was that
5 to do a saline flush nowadays with existing
6 technology, the operator would have to like
7 disconnect something, put in a saline bag, and then
8 keep the machine going, and now the machine's
9 flushing saline instead of blood, and then so it
10 would be a manual operation. So I mean it was a
11 desirable goal, but it was not a design requirement
12 because it's not even done today. And I'm giving
13 that as an example of some roads we had to go down
14 because of CreatiVasc's lack of understanding maybe
15 or -- or breadth or frankly not having their act
16 together.

17 Q Okay, but so but were -- were you able to find a
18 sensor that met the design requirements?

19 A Not commercially available.

20 Q Okay.

21 A We proposed treating the ones that -- that were
22 commercially available with a rubber diaphragm,
23 which would have made -- which would have worked.
24 But to move on, Tri Tech then could not produce the
25 valve -- the gear pump to their satisfaction. So



1 were hurdles facing the project itself that ended
2 up not being overcome.

3 A Yes, sir.

4 Q Okay.

5 A Did that -- did that answer the original question?

6 Q I think so. Yes, sir. And so and about when did
7 you -- did the communication from CreatiVasc or --
8 or -- or its representatives begin to fade or -- or
9 fall off?

10 A I'd say most of '16.

11 Q Okay.

12 A I was on vacation in January of '16, I think, and -
13 - and that's when Jennings informed Nichole that,
14 you know, I've already got Tom's assignment from
15 eight months prior. So the reason I say that is
16 that Nichole, you know, then called me and said,
17 "What in the hell is going on?"

18 Q Right.

19 A "You know, you've already signed this thing." And
20 I said, "No, I didn't, Nichole." I mean so --

21 Q Okay.

22 A So --

23 Q Okay. In -- in the complaint that has given rise
24 to this lawsuit there is an allegation that

25 CreatiVasc sabotaged Sealevel Systems. Do you know

1 Q -- to your knowledge?

2 A I don't believe so.

3 Q Okay.

4 MR. FEW: Just for clarity, I think there was
5 an NDA initially, so...

6 MR. SHEALY: Yeah, there is some reference to
7 it but and --

8 MR. FEW: And he -- he's --

9 A Normally we would start with an NDA.

10 EXAMINATION BY MR. SHEALY CONTINUED:

11 Q Yeah.

12 A And --

13 Q So --

14 A -- is like the --

15 Q Thank you for that. So let -- let me, so that our
16 -- the record is clear. Before you ever entered
17 into, before Sealevel ever entered into Exhibit 2,
18 did Sealevel to your recollection enter into a
19 nondisclosure agreement with CreatiVasc?

20 A I -- I believe we did.

21 Q Okay. And so other than the nondisclosure
22 agreement and Exhibits -- Exhibit 2 as amended by
23 Exhibits 3 and 4, are you aware of any other
24 agreement between Sealevel and CreatiVasc or its
25 successors?



1 questions. Mr. Few may have some questions for
2 you.

3 EXAMINATION BY MR. FEW:

4 Q Yeah, I do have a few questions. So, Tom, when you
5 were asked about the obligation to purchase, were
6 there any conditions that would've come about or
7 could still come about that would create an
8 obligation to Sealevel with respect to this
9 Generation 2 Hemoaccess Valve System?

10 MR. SHEALY: Object to the form, but I'm not
11 your lawyer to give you instructions to whether you
12 could answer or not, but I can object to the form.

13 A Or what are you asking again? Thank you for the
14 question, Congressman. Can you, would you repeat
15 the question?

16 EXAMINATION BY MR. FEW CONTINUED:

17 Q I refuse to yield my time.

18 A Yeah.

19 Q If they come out with a Hemoaccess Valve System
20 product, there's still an exclusive agreement with
21 Sealevel to manufacture it, right?

22 MR. SHEALY: Object to the form.

23 A Yes, sir.

24 EXAMINATION BY MR. FEW CONTINUED:

25 Q Just to be clear, I think you've answered this in



1 reporting devices? I know you've described a wand,
2 and you've said that Sealevel's responsibility was
3 electronics; but -- but more specifically describe
4 everything that Sealevel did with respect to the
5 development of the wand, do that first, and then
6 I'll ask you about the --

7 A -- Okay.

8 Q -- implanted balloon pressure monitoring and
9 reporting.

10 A Okay. The -- the wand involved developing a
11 handheld device that had a motor in it, a
12 microcomputer, it had some switches, and LEDs. And
13 the idea of the wand was that it would spin that
14 magnet with the motor, which would in turn spin the
15 corresponding magnet and the gear pump, which would
16 cause the valve to open or close. To further, the
17 wand contained rechargeable batteries, a motor, a
18 computer, LEDs, and switches. Again, it looked
19 like a small massage device, and it was designed to
20 hold up to the valve implanted and -- and create
21 the spinning effect that the gear pump and the
22 implant needed to then pump the fluid into the
23 balloons to restrict or allow blood flow. The
24 implant required and we actually developed a
25 prototype of a small circuit board, some of it



1 providing aspects on the wand, such as LEDs,
2 pressure monitoring and that kind of thing?

3 A Yes.

4 Q Ok.

5 A Yeah.

6 Q And y'all had developed that and it had worked?

7 A Yes.

8 Q Okay. Then with respect to this other part, these
9 white tubes that are shown here, and it says,
10 "Arterial valve and venous valve," did Sealevel
11 have any responsibility for any of that?

12 A No, sir.

13 Q Okay. Then this next part that's called the
14 balloon valve controller, what was your
15 understanding and what do you believe that the
16 customer supply agreement required Sealevel to be
17 responsible for with respect to the balloon valve
18 controller, the implanted part?

19 A That would be, and we actually made a prototype of
20 a small circuit board that would represent the
21 implant, and with the idea that when you presented
22 the wand to it, the wand would likely turn the gear
23 pump and then read the pressure sensors to so know,
24 you know, how much spinning to do for the pump,
25 so...



1 lab without having to sign in, and then Steve
2 Johnson. And Steve didn't have access because he
3 never asked for it, but Frank was the technical
4 guy.

5 Q Frank was able to come and go at Sealevel as if he
6 was an employee; is that a fair statement?

7 A Yes, sir.

8 Q And at what point in time do -- do you think you
9 were able to have the workable sensors with the
10 water system that you just described and the
11 pressure monitoring?

12 A That would have been early on coincidence with the
13 wand. Because generally, when you're developing
14 like a two-piece product you -- you -- you -- you
15 can't do one and then, you know, you know, start on
16 the other and hope it works. You've sort of got to
17 do the two in conjunction, just so that
18 mechanically and everything else will -- will fit.
19 So we always had an eye on the implant; but the
20 wand, you know, was an easy handheld, I mean
21 literally, you know, device you could put your
22 hands on and develop. The implant remained in need
23 of the gear pump. And then there was also medical
24 issues with implants, like the coating, you know, I
25 forget what it's called. But the, you know, if the



1 Q You were asked a question about the sabotage, and I
2 believe your answer was related to the IP
3 ownership; do you recall that?

4 A Yes, sir.

5 Q But do you to this day, do you know everything that
6 went on behind the scenes between Brookhaven and
7 Diaxamed and ATEX and CreatiVasc?

8 A I can't say that I do. Honestly, I think the two,
9 what are they called, witnesses before explained a
10 lot of that, but I did not know many of those
11 players at the time. And I'll say again in regard
12 to the sabotage, some of those players have
13 testified that they didn't know this supply
14 agreement existed.

15 Q Would, in your opinion, not disclosing the customer
16 supply agreement and its exclusive provisions for
17 manufacturing with Sealevel, that have been an
18 instance of sabotage?

19 MR. SHEALY: Object to the form.

20 A I -- I believe so.

21 EXAMINATION BY MR. FEW CONTINUED:

22 Q Does it appear to you, from what you've learned in
23 discovery, that ATEX or Diaxamed is now likely in
24 possession of all of the development work that
25 Sealevel contributed pursuant to the customer



1 statement?

2 A Yes, sir. And -- and firmware associated with.

3 Q Yeah, in what ways, and there were other I think
4 they were called team members by Steve Johnson

5 during the course of the performance of the

6 contract; do you remember that?

7 A Yes, sir.

8 Q And there was a meeting that occurred with all of
9 the team members in late 2015, I think; do you

10 recall that?

11 A Yes, sir.

12 Q Did Sealevel make contributions in your opinion
13 toward the development of the Hemoaccess Valve Gen
14 2 Device, or whatever we're calling it, that

15 related to responsibilities of other team members,
16 in other words, not just electronics?

17 A Yes because it was, you know, a system
18 interdependent on all of the pieces working. So
19 again, our expertise is electronics, you know, not
20 mechanics, not bio, you know, medical implanted
21 devices but...

22 Q So from your testimony today, I -- I gather that
23 you believe in what you said a minute ago, that if
24 the other component parts and the other team
25 members, team players, had completed their



CERTIFICATE

This is to certify that the foregoing deposition of Thomas O'Hanlan, consisting of 82 pages, represents a true and accurate transcript of the testimony given by said deponent after first being placed under oath and sworn to speak the whole truth.

This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. This deposition transcript has been transcribed as to the questions set forth and answers provided.

Any and all offered exhibits, stipulations, and objections, if any, involved in the referenced matter are attached or included herein.

IN WITNESS WHEREOF, I have set my hand this 18th day of August 2023.

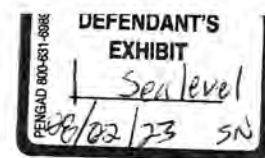


Sallye D. Nelson
Verbatim Court Reporter

Notary Public for the
State of South Carolina
My Commission Expires: May 5th, 2032



ROA 937



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Sealevel Systems, Inc.,)

Plaintiff,)

vs.)

CreatiVasc Medical, Inc., Diaxamed, LLC,)
successor in interest to Brookhaven)
Vascular, Inc., successor in interest to)
Brookhaven Merger Corp. successor in)
interest to CreatiVasc Medical, Inc., John)
D. Feltman, and James S. ("Steve"))
Johnson,)

Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE No.: 2018-CP-23-04092

**DEFENDANTS' AMENDED NOTICE
OF TAKING 30(B)(6) DEPOSITION OF
SEALEVEL SYSTEMS, INC.**

TO: WESLEY D. FEW, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendants CreatiVasc Medical, Inc., Diaxamed, LLC, successor in interest to Brookhaven Vascular, Inc., successor in interest to Brookhaven Merger Corp. successor in interest to CreatiVasc Medical, Inc., John D. Feltman, and James S. ("Steve") Johnson, by and through their undersigned attorneys, will take or cause be taken before a Notary Public or some other person authorized by law to administer oaths the 30(b)(6) deposition upon oral examination of **Sealevel Systems, Inc.** commencing at **10:00 a.m.** on the **2nd day of August 2023**, and continuing from day to day until completion, at Wesley D. Few's office, 416 E. North Street, Second Floor, Greenville, SC 29601. This deposition is to be taken and used pursuant to Rule 30(b)(6) of the *South Carolina Rules of Civil Procedure*. See Exhibit A to this notice for instructions regarding the 30(b)(6) designee.

ADAMS AND REESE LLP

s/ Kirby D. Shealy III

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Attorneys for Defendants

June 26, 2023.

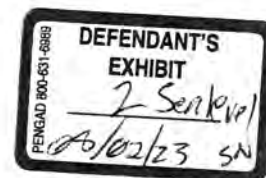
**EXHIBIT A TO NOTICE OF TAKING 30(B)(6), SCRCP DEPOSITION OF
SEALEVEL SYSTEMS, INC.**

Pursuant to Rule 30(b)(6), of the *South Carolina Rules of Civil Procedure*, the deponent is instructed to designate one or more witnesses to testify regarding the following areas of inquiry. The person(s) specified must be an officer, director, managing agent, or a person duly authorized to speak on deponent's behalf. Unless otherwise specified, the relevant time period is from September 15, 2014 to the present. Please produce the person(s) who have the most information about the following areas of inquiry:

1. The formation of a Customer Supply Agreement between Sealevel Systems, Inc. and Creativasc on or about October 28, 2014.
2. Your work on the Hemoaccess Valve System.
3. Your performance of your obligations in the Customer Supply Agreement referenced above.
4. Your knowledge of efforts to sabotage Sealevel Systems, Inc. with respect to its performance under the Customer Supply Agreement referenced above.
5. The ownership of the intellectual property described in patent application serial number 14/695241.
6. Your allegations that CreatiVasc breached the Customer Supply Agreement referenced above.
7. The invoice that was generated and transmitted to CreatiVasc on or about June 26, 2017.

The designee(s) is instructed to bring to this deposition the paper and electronic records in its possession, custody, access or control relevant to or necessary to answer the inquiries outlined above.

CUSTOMER SUPPLY AGREEMENT



This SUPPLY AGREEMENT ("Agreement"), dated as of October 28th, 2014 (the "Effective Date"), is by and between Sealevel Systems, Inc., a South Carolina corporation located at 2779 Greenville Highway, Liberty, SC 29657 ("Sealevel"), and CreatiVase Medical Inc., a South Carolina corporation located at 300 East Coffee Street, Greenville, SC, 29601 ("Customer"). Sealevel and Customer may each be referred to as a "Party" and collectively referred to as the "Parties."

Background

- A. Customer is engaged in, among other things, providing advanced biomedical technology for addressing the complications associated with hemodialysis. Customer desires to have Sealevel design and manufacture the motor control and valve monitor electronics (both hardware and software) for use in the CreatiVase Hemoaccess Valve System® (the "System").
- B. Sealevel desires to design and manufacture certain of the Product, as defined below, and provide to customer, and Customer desires to procure Product from Sealevel.
- C. The Parties wish to establish terms and conditions under which the Product will be ordered and purchased by Customer and supplied to Customer by Sealevel.

Accordingly, the Parties agree as follows:

1. **Scope.** Sealevel agrees to design, manufacture, sell and deliver to Customer hardware and software (the "Product") used in the System's handheld actuator and implanted balloon pressure monitoring and reporting devices in accordance with the specifications set forth in Exhibit A, which is attached hereto and incorporated herein by reference (such specifications, the "Specifications"). Sealevel shall be responsible for procuring all materials associated with the manufacture of the Product, as well as assembling and testing the Product. During the term of this Agreement, (i) Sealevel shall be the exclusive supplier of the Product to Customer; (ii) Customer shall not, directly or indirectly, purchase or order the Product, or any other good substantially similar to the Product, from any person or entity other than Sealevel.
2. **Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and expire on the date this Agreement is terminated pursuant to the provisions of Section 11 or 12 below.
3. **Purchase Orders; Price.** Orders for the Product shall be made by Customer by written or electronic orders issued by Customer to Sealevel substantially in the form of Exhibit B, attached hereto and incorporated herein by reference (each such order, a "Purchase Order"). The Purchase Order shall specify the dates and quantities of Product to be delivered and the current price for the Product. The price for the Product will be agreed upon in writing by the Parties and may not be changed except as agreed upon in writing by the Parties. On a regular basis during the Term, the Parties will discuss possible price reductions based on the cost of

Initial: SJ

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raw materials and components and the quantity of Product purchased and forecast to be purchased by Customer. If market prices for Product similar to the Product decrease during the term of this Agreement, Sealevel will use commercially reasonable efforts to offer decreased prices to Customer for Product. If Customer requests changes to the Product, the Parties will discuss possible price increases or decreases proportional to Sealevel's actual cost increases or decreases caused by such changes.

4. **Terms of Payment.** On or after shipment of Product to Customer under a Purchase Order, Sealevel shall issue an invoice in the form of Exhibit C to Customer (the "Invoice"). Payments shall be due net thirty (30) days from the date of shipment or the date of Invoice, whichever is later.
5. **Delivery.** Product will be delivered in accordance to the dates supplied in writing by Customer on Purchase Orders and accepted by Sealevel in writing. Lead time of the Product shall be in accordance with the lead time stated as part of the product quotation provided by Sealevel in the form of Exhibit D to Customer (the "Quotation") and validated at the time of order placement based on current market and supply conditions. Unless otherwise expressly agreed to in writing by Sealevel, Purchase Order(s) are non-cancellable/non-returnable, but delivery of some or all the Product in a Purchase Order may be rescheduled up to three (3) months after the scheduled delivery date, provided that written notice of rescheduling is received by Sealevel at least thirty (30) days before the originally-scheduled delivery.
6. **Intellectual Property.** Sealevel will not be acquiring any intellectual property rights in the System or in any pre-existing intellectual property or technology of Customer or Customer's customers or Customer's vendors. Sealevel will own and retain intellectual property rights for Sealevel's pre-existing intellectual property and technology, and for any concepts developed by Sealevel while performing under this Agreement.
7. **Title, Risk of Loss and Claims.** Upon shipment of the Product to Customer pursuant to this Agreement and under a Purchase Order, title to the Product including risk of loss shall pass to Customer. Customer must make any claims against Sealevel for shortages in quantities shipped within sixty (60) business days from the date of receipt of Product.
8. **Warranty.** Sealevel shall, at its option and sole expense, repair or replace any Product, or any portion thereof, that does not conform to the Sealevel Standards which are set forth in Exhibit E, attached hereto and incorporated herein by reference (the "Warranty"). This provision shall survive the expiration or termination of this Agreement.
9. **Intentionally Omitted.**
10. **Packaging.** All shipments shall be adequately packaged to prevent any damage during shipment. Any goods damaged in shipment shall be repaired or replaced under the Warranty set forth in Section 8. All packaging shall have the following information on the outside of each box: (i) Purchase Order number; and (ii) quantity of Product in box.



11. Force Majeure. Neither Sealevel nor Customer shall be considered in default or be held liable for any delay or failure to perform its obligations under this Agreement if such delay or failure arises directly or indirectly out of an act of nature, war, strike, lockout, trade dispute, fire, quarantine restriction, governmental action or by causes beyond the reasonable control of such Party. Provided that the affected Party makes all commercially reasonable efforts to mitigate such delay or failure, (a) any obligation of Sealevel or Customer affected by one or more such events will be postponed until the causes underlying the force majeure has been eliminated, at which time the obligation will again be in effect, and (b) any loss of time by the force majeure will not be held against the Party who was unable to comply with its obligations under this Agreement because of the force majeure, and the deadline for such Party's obligations will be extended by the number of days of the underlying force majeure event. The other Party may terminate this Agreement on ten (10) days written notice if such force majeure event lasts for more than thirty (30) days.

12. Termination.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated (i) upon the mutual written agreement of the Parties to so terminate; (ii) by either Party upon a breach of the other Party's obligations hereunder that such Party fails to cure within ten (10) business days after written notice of such breach from the non-breaching Party, or if such breach is not capable of cure; provided, however, that if such breach is capable of cure but cannot reasonably be cured by such Party within ten (10) business days, then the non-breaching Party will not be entitled to terminate this Agreement if such Party commences to cure such breach within ten (10) business days after written notice from the non-breaching Party and diligently and in good faith continues to cure such breach and the breach is actually cured within sixty (60) days; or (iii) after the tenth (10th) anniversary of the Effective Date for convenience at any time upon (A) ninety (90) days' written notice from Customer to Sealevel, or (B) ninety (90) days' written notice from Sealevel to Customer.

(b) A Party's right to terminate hereunder shall be in addition to any other rights and remedies such Party may have hereunder or under applicable law, subject to the limitations set forth in this Agreement. If Sealevel terminates for Customer's breach, Customer will take delivery of and pay the full price for the remainder of open Purchase Orders (if any). If Customer terminates for Sealevel's breach, Customer may require delivery of Product on outstanding Purchase Orders. If Customer terminates for convenience, Customer will take delivery of and pay the full price for the remainder of open Purchase Orders (if any).

13. Indemnification.

(a) Customer shall indemnify and hold harmless Sealevel, together with its directors, officers, employees, agents, and shareholders, from and against any and all Damages (hereinafter defined), and from any and all Actions (hereinafter defined) of any nature whatsoever which are asserted or made by third-parties (collectively, "Claims") against Sealevel arising out of or related to: (i) injury to or death of any person or damage to, or

destruction of, property arising directly out of, or in any way resulting from, the acts or omissions, whether negligent or otherwise, of Customer, its employees, subcontractors, or agents in performance of its obligations under this Agreement, except to the extent such Claims are the result of the unauthorized acts, gross negligence or willful misconduct of Sealevel, its directors, officers, employees, agents or shareholders; (ii) infringement or misappropriation of a third party's patent, copyright, trade secret or other intellectual property; or (iii) a violation by Customer of its obligations under Section 14 below. This Section shall survive the expiration or termination of this Agreement indefinitely.

- (b) Sealevel shall indemnify and hold harmless Customer, together with its directors, officers, employees, agents, and shareholders, from and against any and all Claims by reason of (i) injury to or death of any person or damage to, or destruction of, property arising directly out of, or in any way resulting from, the acts or omissions, whether negligent or otherwise, of Sealevel, its employees, subcontractors, or agents in performance of its obligations under this Agreement, except to the extent such Claims are the result of the unauthorized acts, gross negligence or willful misconduct of Customer, its directors, officers, employees, agents or shareholders; or (ii) infringement or misappropriation of a third party's patent, copyright, trade secret or other intellectual property by Sealevel's pre-existing intellectual property and technology while performing under this Agreement; or (iii) a violation by Sealevel of its obligations under Section 14 below. This Section shall survive the expiration or termination of this Agreement indefinitely. In no event shall Sealevel's indemnification obligation hereunder exceed the amount set forth in Section 16.
- (c) The Party seeking indemnity will give the indemnifying Party prompt notice of any claim, provide reasonable assistance to the indemnifying Party in the defense of the claim, and allow the indemnifying Party sole control over the litigation or settlement of such claim; provided, however, that the indemnifying Party will not discontinue or settle such claim in a manner that does not unconditionally release the Party seeking indemnity without such Party's prior written consent, which shall not be unreasonably withheld.
- (d) This Section 13 states the indemnifying Party's sole liability, and the other Party's exclusive remedy, for infringement or misappropriation of any third party's patent, copyright, trademark, trade secret or other intellectual property.
- (e) Definitions.
 - i. "Action" means any claim, action, cause of action, suit (whether in contract or tort or otherwise), litigation (whether at law or in equity and whether civil or criminal), controversy, assessment, grievance, arbitration, investigation, audit, opposition, interference, hearing, mediation, charge, complaint, demand, notice or proceeding to, from, by or before any Governmental Authority or any mediator.

- ii. "Damages" means all losses, liability, damages, deficiencies, claims, judgments, interest, costs, amounts paid in settlement, liabilities, fines, penalties, expenses and fees of whatever nature and kind (including court costs and reasonable experts', attorneys' and other professionals' fees and expenses), and any other cost of settlement, investigation, defense, arbitration and other enforcement costs.
- iii. "Governmental Authority" means any court, administrative agency or commission or other United States, federal, national, provincial, state, local, foreign or other governmental authority, of any nature (including any government, quasi-governmental authority, instrumentality, board, bureau, agency, court, commission or any regulatory, administrative or other department, agency or branch of any of the foregoing) or any body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

14. Confidential Information.

- (a) As to any technical information or other information exchanged by the Parties during this Agreement, any Party receiving information (the "Receiving Party") from the other Party (the "Disclosing Party") under this Agreement shall regard such information (whether written, oral, computer-based, or otherwise) as confidential and preserve the Disclosing Party's proprietary rights as to such information. The Receiving Party shall not, without prior written consent from the Disclosing Party, disclose such information to any third party or use such information for its own benefit except for the purposes of this Agreement. The Receiving Party shall take all necessary precautions to ensure that all its employees, agents, officers, directors, and subcontractors treat such information as confidential and do not divulge such information. All such information provided to the Receiving Party shall remain the sole property of the Disclosing Party. The Receiving Party's obligations under this Section shall survive the termination of this Agreement for a period of five (5) years following the termination date.
- (b) Each Party hereby agrees that the Receiving Party shall have no such obligations with respect to information that (i) is or becomes publicly available through no breach of this Agreement by the Receiving Party; (ii) is approved for release by the written authorization of the Disclosing Party; (iii) becomes known to the Receiving Party by a source that had the right to disclose it without restriction; (iv) was known by the Receiving Party prior to disclosure; or (v) is independently developed by the Receiving Party.
- (c) It is not a breach of this Section 14 for a Receiving Party to disclose information that is required to be disclosed by law; provided, however, that in the event of a proposed disclosure pursuant to this provision, the Receiving Party shall give written notice to the Disclosing Party of such disclosure not less than ten (10) days prior to such disclosure or otherwise as soon as possible.

15. ARBITRATION. ANY DISPUTE, CLAIM, DEMAND OR CONTROVERSY ("DISPUTE") ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT (INCLUDING THE PERFORMANCE OF EACH PARTY'S OBLIGATIONS AND A PURPORTED BREACH THEREOF), SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

THE AGREEMENT OF THE PARTIES TO ARBITRATE COVERS ALL DISPUTES OF EVERY KIND RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES. DISPUTES INCLUDE, WITHOUT LIMITATION, ACTIONS FOR BREACH OF CONTRACT WITH RESPECT TO THIS AGREEMENT, THE INTERPRETATION OF THIS AGREEMENT, THE PERFORMANCE OF EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT, AND THE RELATIONSHIP OF THE PARTIES HEREUNDER, AS WELL AS ANY CLAIM BASED UPON TORT OR ANY OTHER CAUSES OF ACTION. THE FORUM FOR THE ARBITRATION SHALL BE GREENVILLE COUNTY, SOUTH CAROLINA, AND THE GOVERNING LAW FOR THE ARBITRATION SHALL BE THE LAW OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. THE ARBITRATOR SHALL BE A MUTUALLY AGREED UPON MEMBER OF THE SOUTH CAROLINA BAR. IF THE PARTIES SHOULD BE UNABLE TO AGREE ON AN ARBITRATOR, THEN THEY SHALL EACH SELECT A PROPOSED ARBITRATOR WHO TOGETHER WILL SELECT THE SINGLE ARBITRATOR TO ADMINISTER THE PROCEEDING. EACH PARTY SHALL BEAR ITS OWN FEES AND EXPENSES WITH RESPECT TO THE ARBITRATION AND ANY RELATED PROCEEDING AND THE PARTIES SHALL SHARE EQUALLY THE FEES/EXPENSES OF THE ARBITRATOR.

THE RULES OF ARBITRATION SHALL BE THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AS MODIFIED BY ANY OTHER INSTRUCTIONS THAT THE PARTIES MAY AGREE UPON AT THE TIME. THE ARBITRATOR SHALL BE BOUND BY AND SHALL STRICTLY ENFORCE THE TERMS OF THIS AGREEMENT AND MAY NOT LIMIT, EXPAND OR OTHERWISE MODIFY ITS TERMS.

THE PARTIES SUBMIT THAT THIS AGREEMENT AFFECTS INTERSTATE COMMERCE AND THAT THIS ARBITRATION CLAUSE SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT TO THE MAXIMUM EXTENT PERMISSIBLE UNDER LAW. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

16. Limitation of Liability. SEALEVEL'S AGGREGATE LIABILITY TO CUSTOMER SHALL NOT EXCEED THE AGGREGATE SUM OF ALL AMOUNTS PAID BY CUSTOMER TO SEALEVEL UNDER THIS AGREEMENT. IN NO CIRCUMSTANCE SHALL SEALEVEL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF SEALEVEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS

SECTION IS A MATERIAL INDUCEMENT FOR SEALEVEL TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

17. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of conflicts of law. Subject to the provisions of Section 14 above, venue for any legal action arising out of or relating to this Agreement shall be exclusively in the State or Federal courts located in Greenville, South Carolina. The Parties hereby consent to the jurisdiction of such courts.
18. **Relationship of the Parties.** Each Party is an independent contractor and not the agent or employee of the other Party. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship or subject the Parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein.
19. **Order of Precedence.** Unless otherwise agreed upon by the Parties, any conflict or inconsistency between the terms of this Agreement, a Purchase Order, and an Invoice will be resolved by giving precedence to those documents in the following order, with the document to be given greatest precedence listed first: (i) this Agreement; (ii) a Purchase Order; (iii) an Invoice.
20. **Laws and Regulations.** The Product shall comply with all applicable safety and governmental regulations in effect at the time of delivery. Each Party shall comply with all applicable laws and regulations in the performance of its obligations hereunder.
21. **Amendments.** No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each Party.
22. **Counterparts.** This Agreement may be executed by each of the Parties hereto in separate counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.
23. **Waiver.** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the Party claimed to have waived or consented. Any waiver of a breach by the other shall not constitute a consent to or waiver of any other subsequent breach.
24. **Assignment.** Neither Party shall assign this Agreement or any of its rights hereunder, nor shall Customer subcontract any substantial portion of this Agreement, without the prior written consent of the other Party; provided, however, that any Party may, without such consent, assign this Agreement in connection with the transfer or sale of all or substantially all of its business, or in the event of its merger, consolidation, change in control or other similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment or transfer in violation of this Section shall be void.

25. Notice. All notices shall be in writing and deemed duly given if delivered personally, one day after deposit for signature-confirmed delivery with a national overnight delivery service, or three (3) days after mailing, if sent registered or certified mail to the following address:

(a) If to Sealevel:

Sealevel Systems, Inc.
2779 Greenville Highway
P.O. Box 830
Liberty, South Carolina 29657
Attn: Ben O'Hanlan

With a copy to:

Nelson Mullins Riley & Scarborough LLP
104 S. Main Street, Suite 900
Greenville, South Carolina 29601
Attn: John M. Campbell, Jr., Esq.

(b) If to Customer:

CreatiVase Medical, Inc.
300 East Coffee Street
Greenville, SC 29601
Attn: Steve Johnson

With a copy to: Womble Carlyle Sandridge & Rice
550 South Main Street, Suite 400
Greenville, SC 29601
Attn: Matt Latrick

26. Entire Agreement. This Agreement, and any Purchase Orders and Invoices entered into by the Parties pursuant hereto, and the Warranty, represent the entire agreement between the Parties with respect to the purchase and sale of the Product. All prior or contemporaneous agreements, representations, statements, negotiations and undertakings with respect to the subject matter hereto, whether oral or written, are superseded.

Execution Page to Follow

EXECUTION PAGE OF CUSTOMER SUPPLY AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

CreatiVasc Medical, Inc.

By: 
Steve Johnson
Chief Executive Officer

SEALEVEL SYSTEMS, INC.

By: 
Ben O'Hanlan
President

Exhibit A
Specifications

See attached.

Exhibit B
Form of Purchase Order

See attached.

Exhibit C
Form of Invoice

See attached.

Exhibit D
Form of Quotation

See attached.

Exhibit E
Warranty

Lifetime Warranty

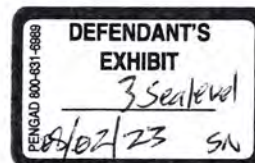
Sealevel's commitment to providing the best I/O solutions is reflected in the Lifetime Warranty that is standard on all Sealevel manufactured I/O products. We are able to offer this warranty due to our control of manufacturing quality and the historically high reliability of our products in the field. For Relio™ and SeaPAC™ industrial computing products, please refer to the product specifications for warranty information. Sealevel products are designed and manufactured at its Liberty, South Carolina facility, allowing direct control over product development, production, burn-in and testing. Sealevel achieved ISO-9001:2000 certification in 2002.

Warranty Policy

Sealevel warrants that the Product shall conform to and perform in accordance with published technical specifications and shall be free of defects in materials and workmanship for the warranty period. In the event of failure, Sealevel will repair or replace the product at Sealevel's sole discretion. Failures resulting from misapplication or misuse of the Product, failure to adhere to any specifications or instructions, or failure resulting from neglect, abuse, accidents, or acts of nature are not covered under this warranty.

Warranty service may be obtained by delivering the Product to Sealevel and providing proof of purchase. Customer agrees to insure the Product or assume the risk of loss or damage in transit, to prepay shipping charges to Sealevel, and to use the original shipping container or equivalent. Warranty is valid only for original purchaser and is not transferable.

This warranty applies to Sealevel manufactured Product. Product purchased through Sealevel but manufactured by a third party will retain the original manufacturer's warranty.



FIRST AMENDMENT TO
CUSTOMER SUPPLY AGREEMENT

This First Amendment ("Amendment") to the October 28, 2014 Customer Supply Agreement between Sealevel Systems, Inc. ("Sealevel") and CreatiVase Medical, Inc. ("Customer") (the "Agreement") is made between the parties and is effective as of April 10, 2015.

NOW, THEREFORE, in consideration of the agreements herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sealevel and Customer hereby agree as follows:

Section 6 of the Agreement is hereby amended to add new Sections 6(a) and (b) to the existing provisions in Section 6:

6(a) Patent Rights. Customer shall not seek patent protection for any invention that shall disclose or claim Sealevel inventions ("Patent Rights") without express written approval from Sealevel, which will not be unreasonably withheld. If approved by Sealevel, Customer shall bear all costs associated with obtaining such Patent Rights and Sealevel agrees to cooperate to take whatever actions are necessary to prosecute and maintain such patent applications and/or any resulting patents. Other than as set forth in the Supply Agreement, Customer shall not license, sell, offer for sale, make or otherwise use the Patent Rights or any invention claimed as part of the Patent Rights, without express written authorization from Sealevel. The parties may negotiate in good faith to determine an appropriate license fee to be paid to Sealevel for any such use of the Patent Rights.

6(b) Patent Enforcement. If either party shall determine that there is an existing infringement of any Patent Rights, it shall promptly notify the other party in writing of the infringement. The parties shall negotiate in good faith regarding their respective willingness to participate in any infringement suit and, if so, what percentage of costs it shall cover. If either party does not wish to be involved with such lawsuit, the other party may bring suit against such third party entirely at its own expense. If such infringement suit brought under this section shall prove successful and either party shall collect damages, costs, or attorney's fees, each party shall retain a percentage of the monies recovered proportionate to the amount of costs it agreed to cover in the litigation. If either party brings an infringement suit against a third party under the provisions of this Section 6(b), the other party shall sign all lawful documents necessary and give all truthful testimony requested by the party bringing suit.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective duly authorized representatives as of the Effective Date.

CreatiVase Medical, Inc.

By: [Signature]
Steve Johnson
Chief Executive Officer

Sealevel Systems, Inc.

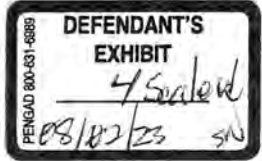
By: [Signature]
Ben O'Hanlan
President

504808291 03/07/2018

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT4855024

SUBMISSION TYPE:	NEW ASSIGNMENT	
NATURE OF CONVEYANCE:	SECOND AMENDMENT TO CUSTOMER SUPPLY AGREEMENT	
CONVEYING PARTY DATA		
Name		Execution Date
CREATIVASC MEDICAL, INC.		03/09/2016
RECEIVING PARTY DATA		
Name:	SEALEVEL SYSTEMS, INC.	
Street Address:	2779 GREENVILLE HWY	
City:	LIBERTY	
State/Country:	SOUTH CAROLINA	
Postal Code:	29657	
PROPERTY NUMBERS Total: 2		
Property Type	Number	
Application Number:	15898917	
Application Number:	14695241	
		
CORRESPONDENCE DATA		
Fax Number:	(864)751-5751	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	8646723962	
Email:	docketing@jkiplaw.com	
Correspondent Name:	JK INTELLECTUAL PROPERTY LAW, PA	
Address Line 1:	301 NORTH MAIN STREET, SUITE 1101	
Address Line 4:	GREENVILLE, SOUTH CAROLINA 29601	
ATTORNEY DOCKET NUMBER:	SLS-2-CON	
NAME OF SUBMITTER:	JEFFREY M. KARMILOVICH, REG. NO. 35915	
SIGNATURE:	/Jeffrey M. Karmilovich, Reg. No. 35915/	
DATE SIGNED:	03/07/2018	
Total Attachments: 2		
source=CreatiVasc Second Amendment_fully executed#page1.tif		
source=CreatiVasc Second Amendment_fully executed#page2.tif		

504808291

ROA 957

PATENT
REEL: 045517 FRAME: 0941

SECOND AMENDMENT TO
CUSTOMER SUPPLY AGREEMENT

This Second Amendment ("Amendment") to the October 28, 2014 Customer Supply Agreement between Sealevel Systems, Inc. ("Sealevel") and CreatiVasc Medical, Inc. ("Customer") (the "Agreement") is made between the parties and is effective as of March 9, 2016.

NOW, THEREFORE, in consideration of the agreements herein and for other good and valuable consideration, the receipt of sufficiency which is hereby acknowledged, Sealevel and Customer hereby agree as follows:

Section 6 of the Agreement is hereby amended to add new Section 6(c) to the existing provisions in Section 6:

6(c): Pending System Patent Applications. The provisions of Sections 6(a) and 6(b) of the Agreement, as added per the amendment of April 10, 2015, shall not apply to U.S. Patent Application No. 14,695,241 filed on April 24, 2015 (the "US System Application") and International Patent Application No. PCT/US2015/027418 filed on April 24, 2015 (the "PCT System Application") (collectively referred to as the "System Applications"), both of which are entitled "Magnetically Activated Arteriovenous Access System and Related Methods" and are directed to various aspects related to Customer's System (as previously defined in the Agreement). Customer agrees to cancel any claim(s) contained in the US System Application directed to subject matter contributed by an employee of Sealevel (i.e., remotely powering a sensor communications device using near field communications (NFC)) ("Sealevel Contribution"). Customer agrees to cancel any claim(s) contained in the PCT System Application directed to the Sealevel Contribution at the time of nationalizing such application into any non-US jurisdictions. To the extent necessary to correct inventorship upon cancelling any claim(s) directed to the Sealevel Contribution, Sealevel agrees to assist Customer in obtaining executed documents from any named inventor associated with Sealevel. Customer agrees not to file any future claims directed to the Sealevel Contribution without express written consent from Sealevel. Customer shall be the sole owner of the System Applications and of any patents deriving therefrom (including in the United States and any foreign countries) and shall have the right to file continuations, divisionals, reissue applications, and other related applications claiming priority to the System Applications to the extent that such related applications do not include claims directed to the Sealevel Contribution. Subject to the Customer Supply Agreement, Customer shall also be entitled to license, sell, offer for sale, make, or otherwise use the System described in the System Applications, as well as enforce any patents deriving from the System Applications, freely and without any restriction.

[signature page to follow]

Page 1 of 2

ROA 958

PATENT
REEL: 045517 FRAME: 0942

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective duly authorized representatives as of the Effective Date.

CreatiVase Medical, Inc.

By: 
Steve Johnson
Chief Executive Officer

Sealevel Systems, Inc.

By: 
Ben O'Hanlan
President

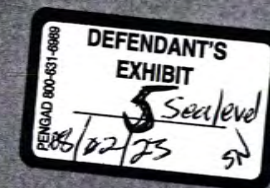
Page 2 of 2

RECORDED: 03/07/2018

ROA 959

PATENT
REEL: 045517 FRAME: 0943

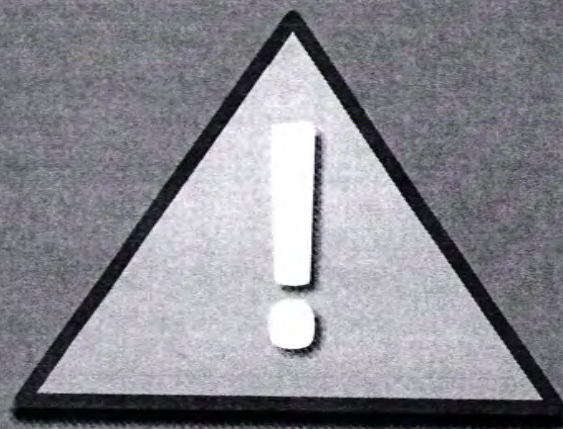
ROA 960



Prepared for SeaLevel Systems Incorporated

September 30, 2014

AN OVERVIEW OF CREATIVASC MEDICAL



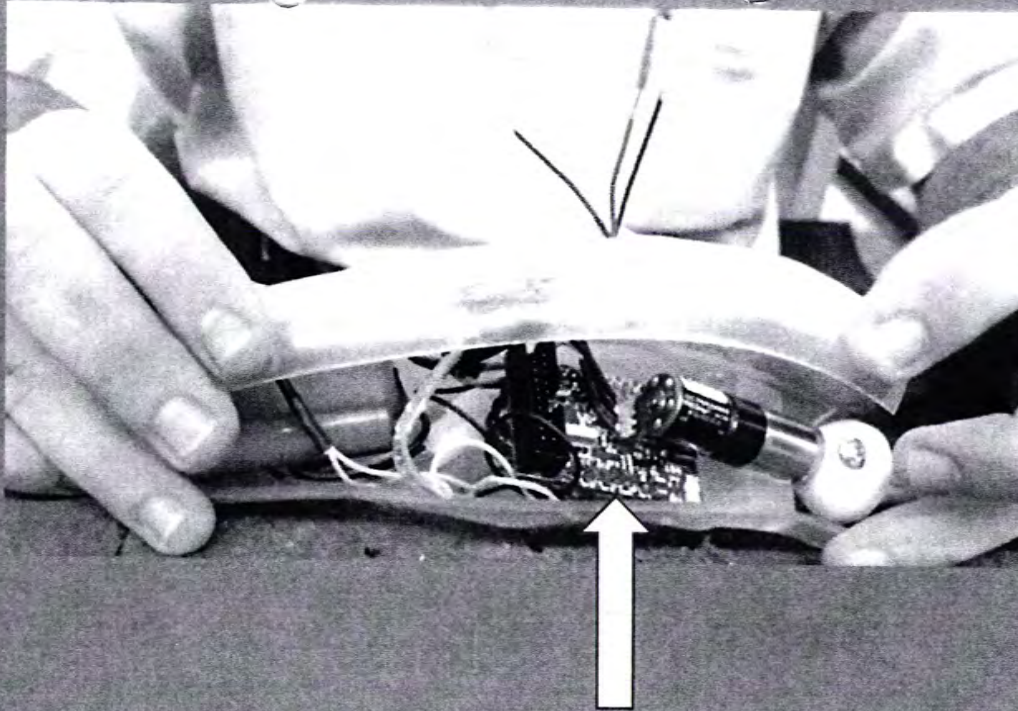
All information disclosed in this presentation is covered under our signed mutual Nondisclosure Agreement.

NONDISCLOSURE AGREEMENT APPLIES

ROA 962



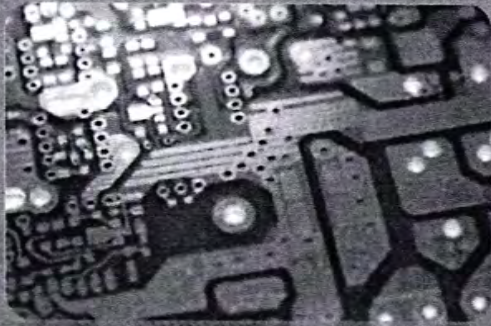
THANK YOU...



Current off-the-shelf circuit board:

- On-off control (external)
- Rotation speed control (internal)

REASON FOR CREATIVASC INTEREST



1. On-Off control
2. Revolution speed control
3. Pressure sensor indicator to confirm complete expansion of balloon valve, close off of graft

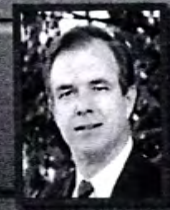
THE IDEAL CIRCUIT BOARD "WISH LIST"



Serial Entrepreneur



Nationally-recognized Vascular Surgeons



Venture Capital Principal



Med Device Designer

THE EXPERIENCED CREATIVASC CORE TEAM

Founded in 2004 by Greenville Surgeon

Management Team Formed in 2007

South Carolina "C" Corporation

Most Capital from SC Investors

Merging into Brookhaven Medical

THE EMERGENCE OF CREATIVASC



FutureMatrix
Interventional



End Stage Renal Disease
(ESRD)

THE BROOKHAVEN SYNERGY

ROA 967

\$49 Billion U.S. Cost

ASRD, NOV 2013



Little innovation in 30 years

THE END STAGE RENAL DISEASE DILEMMA

Medicare: \$88,000 / Patient / Year

Private Payers: \$126,000 / Patient / Year

Repetitive Intervention Cost: \$10,000-12,000



USRDS, NOV 2013

THE U.S. COST BURDEN OF DIALYSIS

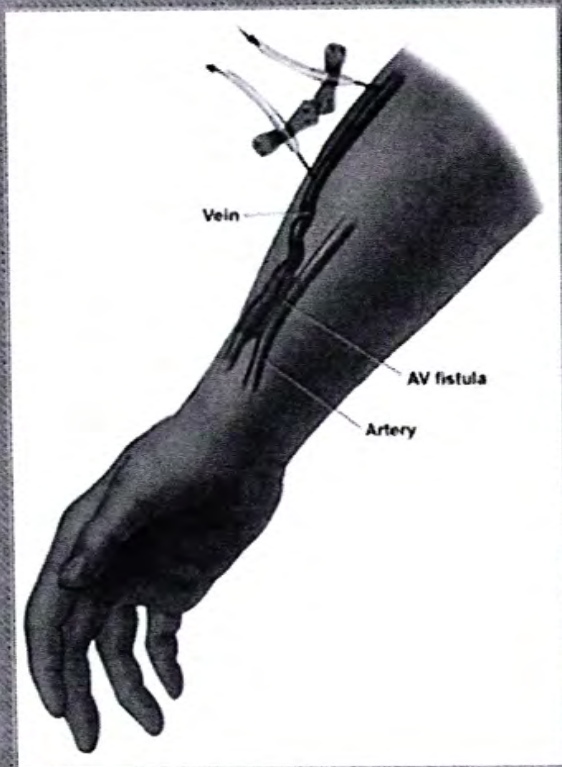
- Annual +6-12% cost burden increase
- 2 million worldwide affected
- Represents >10% who need it
- Developing nations will drive up demand and cost



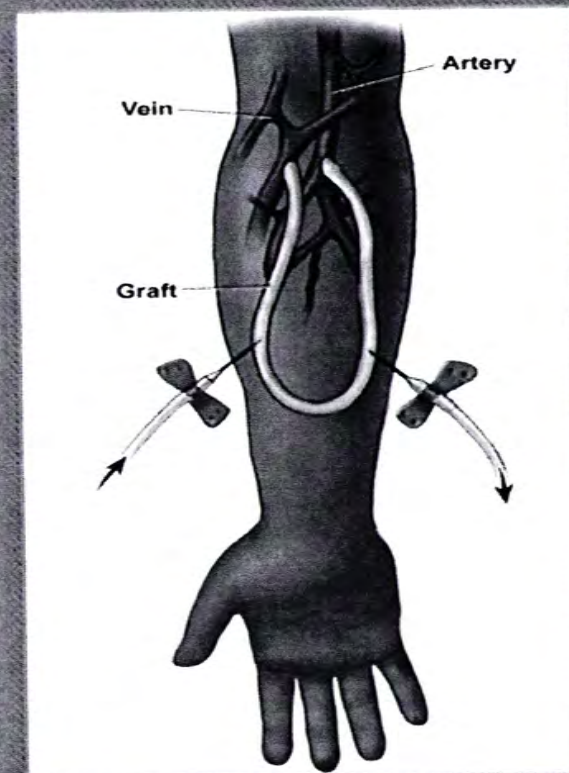
*The Contribution of Chronic Kidney Disease to the
Global Burden of Major Noncommunicable Diseases, 2011*

ESRD IMPACT EXPANDING WORLDWIDE

AV FISTULA

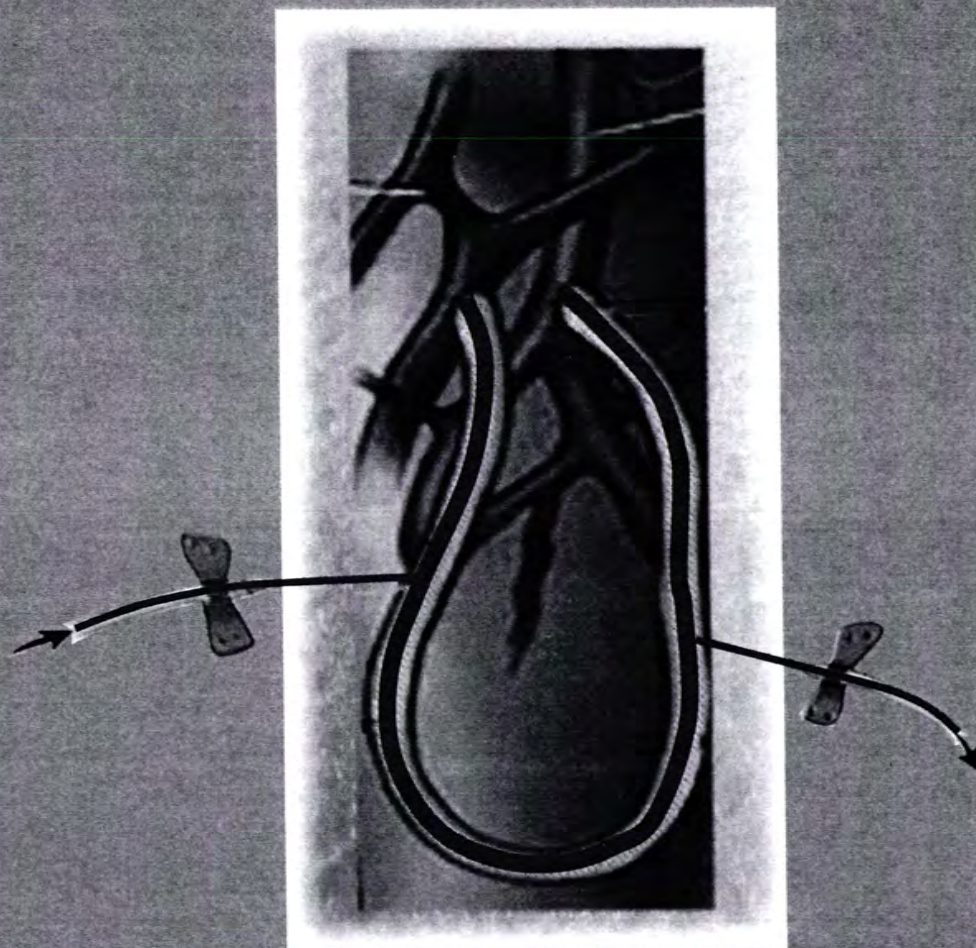


AV GRAFT



MOST COMMON LONG-TERM ACCESS METHODS

ROA 972



ARTERIOVENOUS (AV) GRAFTS



75% fail in 12 months

New England Journal of Medicine, May 2009

THE HIGH INTERVENTION RATE OF AV GRAFTS

Unnatural diversion of
blood & its associated
adverse hemodynamic
effects



REASONS FOR AV GRAFT FAILURE

Post-Dialysis Bleeding

Repetitive Clotting

“Blood Steal”

Congestive Heart Failure

Infection

UNIVERSAL AV GRAFT COMPLICATIONS



Why not have an
AV graft with an
“on/off switch?”



THE QUESTION THAT WILL CHANGE DIALYSIS



**HEMOACCESS
VALVE SYSTEM**



ROA 977

ROA 978



INNOVATION
PATHWAY



THIS CHANGED IT ALL



- 30 competing companies
- Exhaustive review process
- 3 companies to be chosen

CreatiVasc and HVS Device
Selected for Innovation Pathway

STIFF COMPETITION FOR FDA INNOVATION PATHWAY

ROA 980



510(k)

HVS DEVICE RECLASSIFIED FROM CLASS III PMA



HEMOACCESS
VALVE SYSTEM



328i

Generation 1



750 Li

Generation 2

CREATIVASC CONTINUING INNOVATION

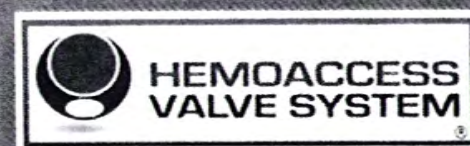
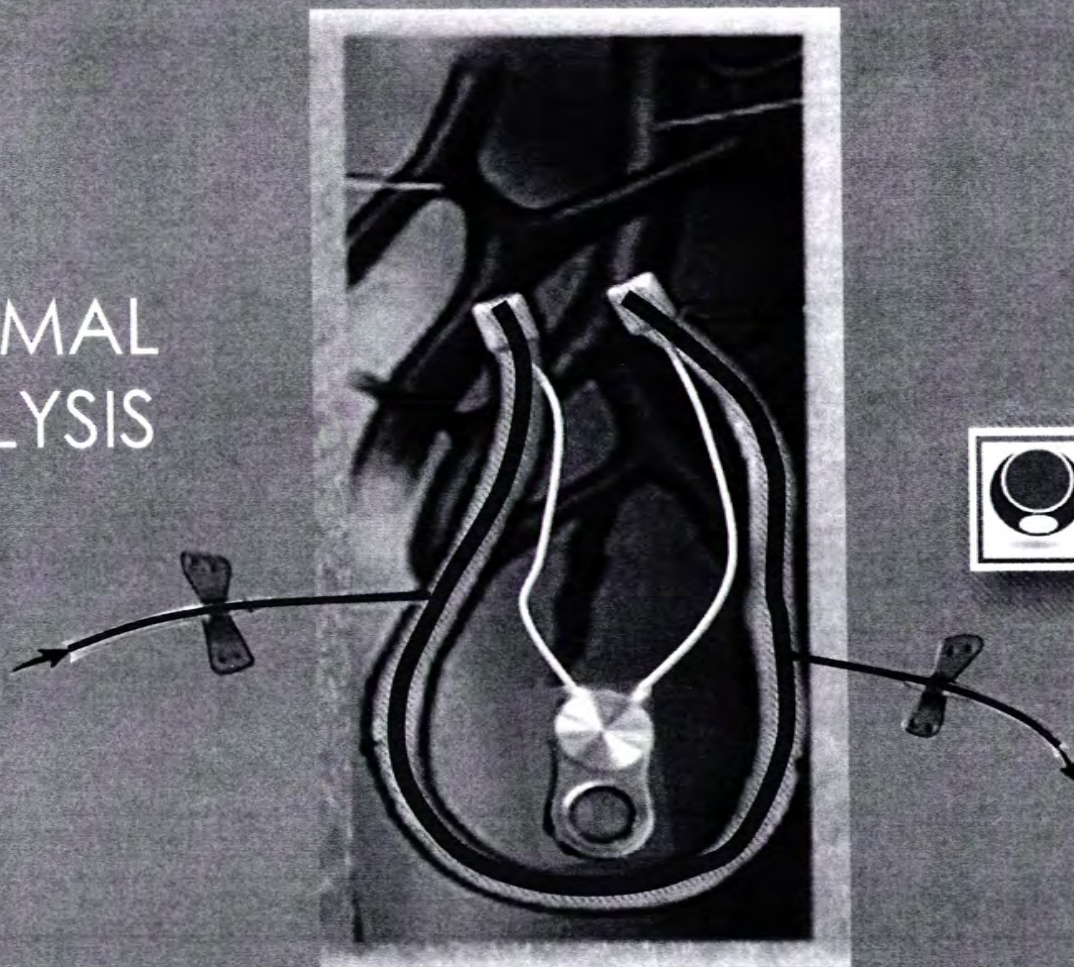
ROA 982



328i

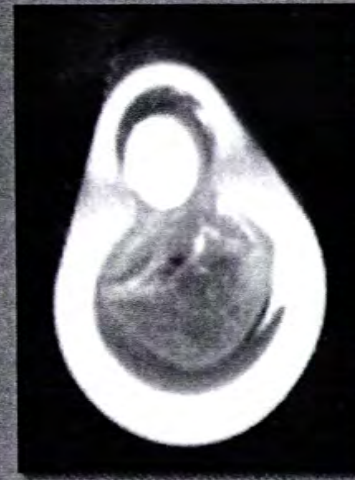
GENERATION 1 HVS OVERVIEW

NORMAL
DIALYSIS



HVS DEVICE: VALVES OPEN

Balloon with
no graft



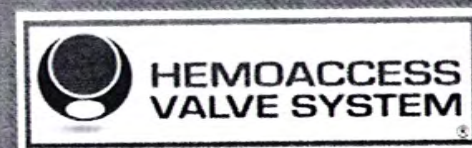
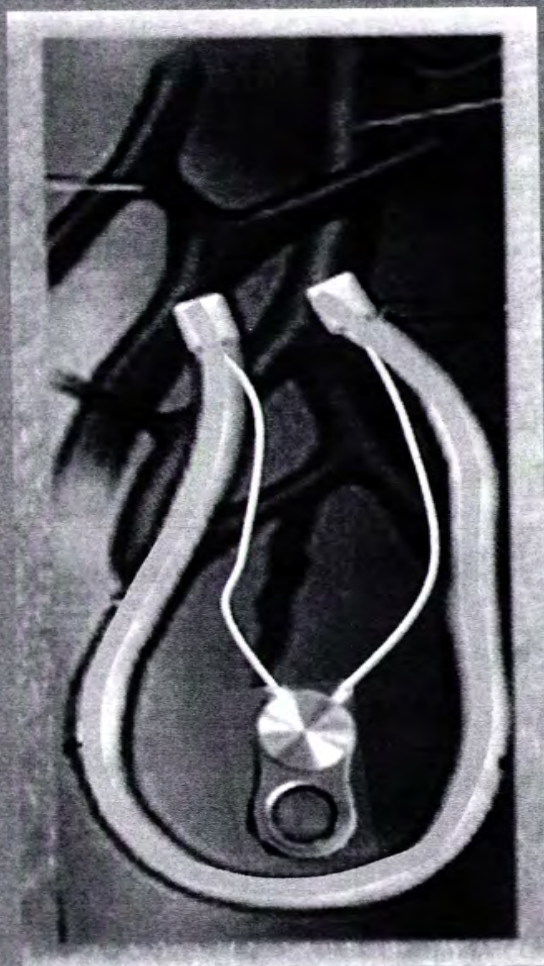
Balloon
closing graft



FUNCTION OF THE HVS GEN 1 VALVES

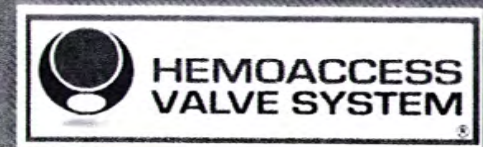
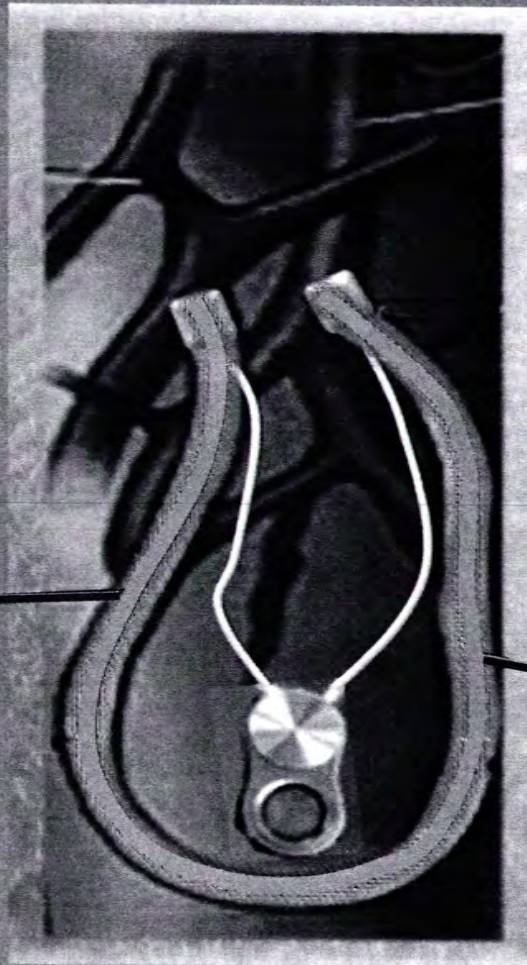
ROA 985

STERILE SALINE
IN GRAFT
BETWEEN DIALYSIS



HVS VALVES CLOSED

Flow from
Saline
Bag

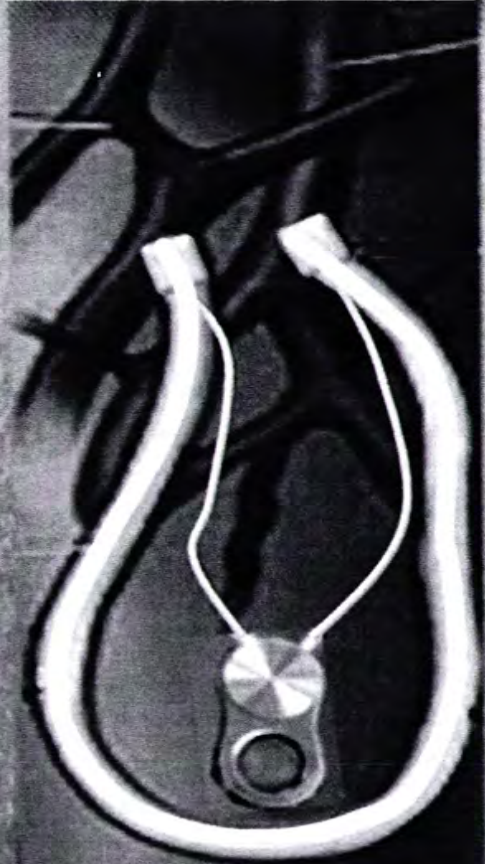


Exit to
Flush
Bag

WHAT ABOUT THE BLOOD IN THE GRAFT?



HEMOACCESS
VALVE SYSTEM



Post-Dialysis Bleeding

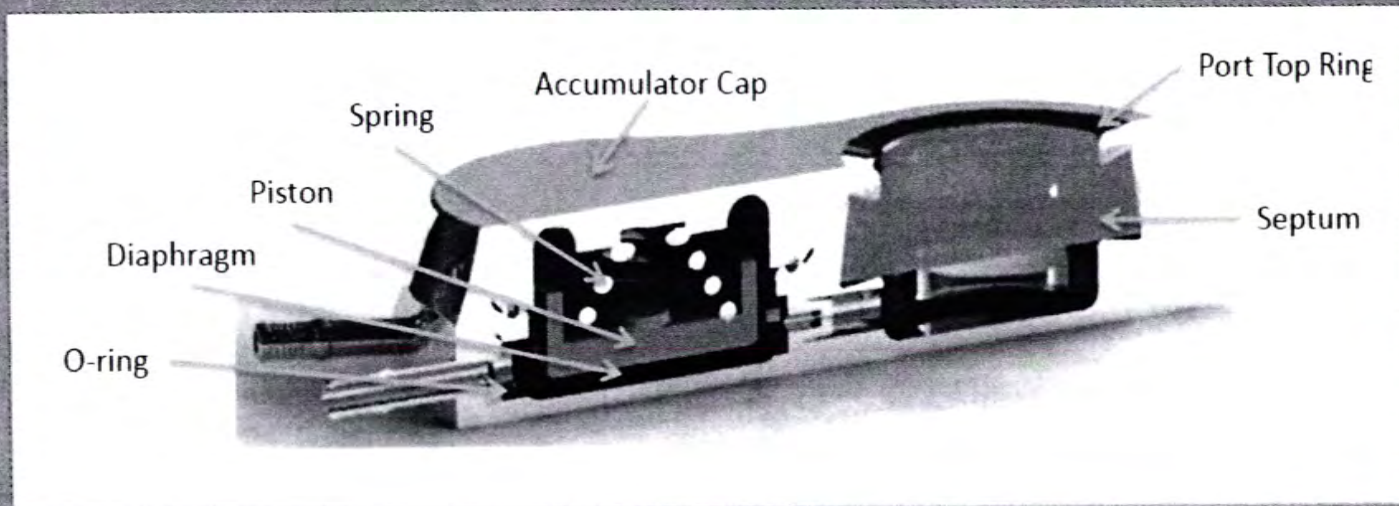
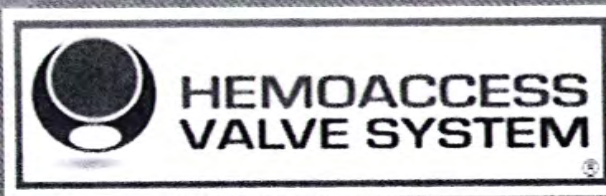
Repetitive Clotting

"Blood Steal"

Pseudoaneurysms

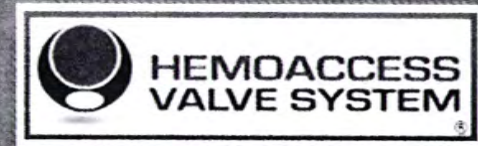
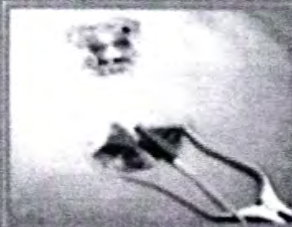
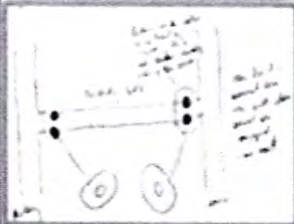
Congestive Heart Failure

RESTORING NORMAL BLOOD PATHWAY



COMPONENTS OF THE GEN 1 HVS DEVICE
ROA 988

ROA 989



CRITICAL MILESTONES ACCOMPLISHED



- ✓ Require no needles to activate
- ✓ Significantly streamline valve assemblies

THE CLINICAL "WISH LIST" FOR GEN 2

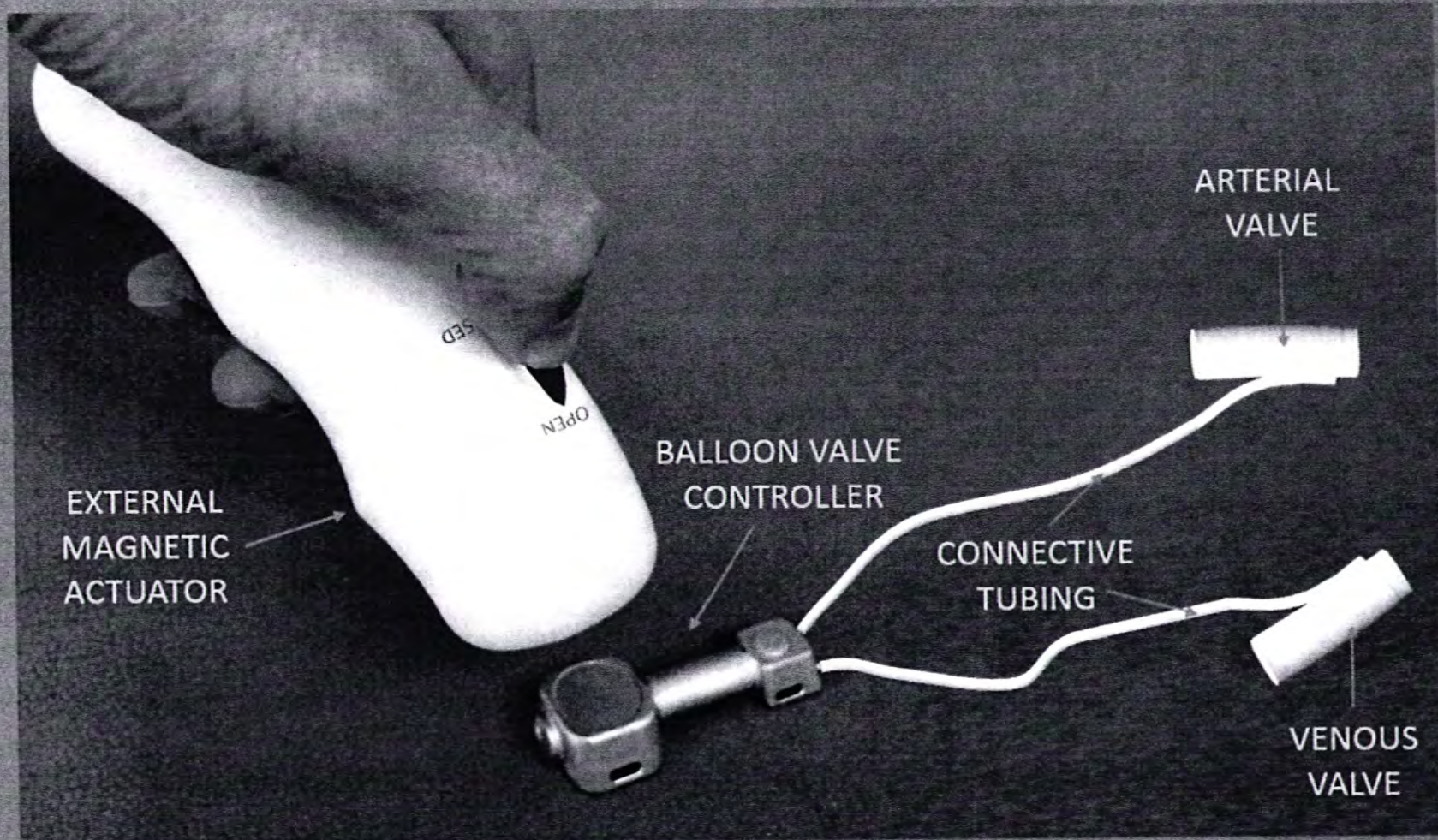


750 Li

CONFIDENTIAL

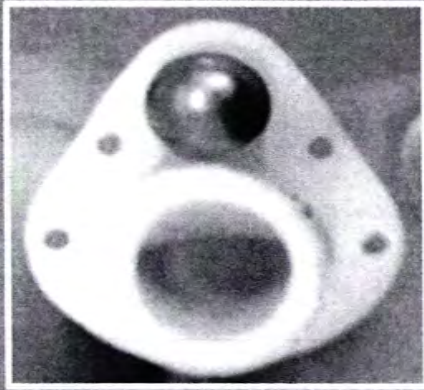
GENERATION 2 HVS OVERVIEW

ROA 991

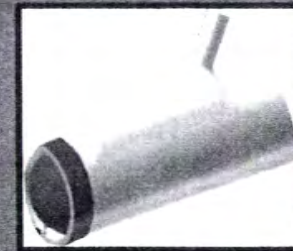


HVS GENERATION 2 OVERVIEW

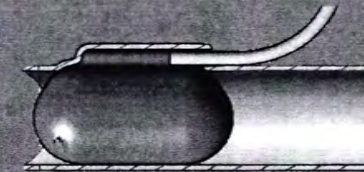
GEN 1 HVS VALVE



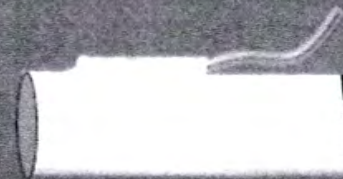
NEW HVS VALVE



PROFILE VIEW



CUT-AWAY



PROTOTYPE



CONFIDENTIAL

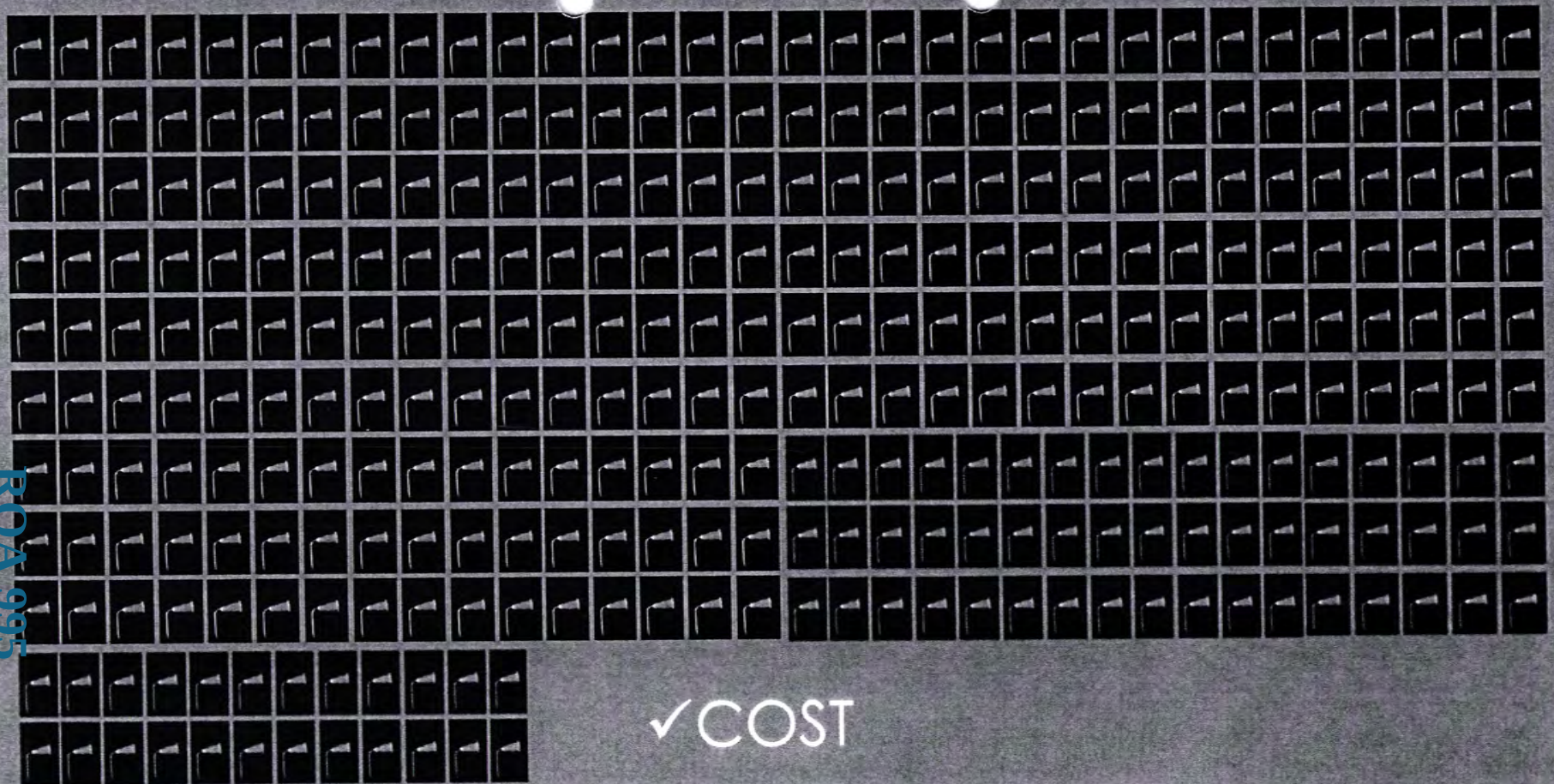
SIGNIFICANTLY STREAMLINE VALVES

ROA 994



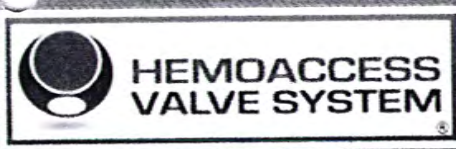
“GET RID OF THE NEEDLES”

ROA 995



- ✓ COST
- ✓ PATIENT DISCOMFORT
- ✓ POTENTIAL FOR INFECTION

312 NEEDLE STICKS PER YEAR



BALLOONS
INFLATED,
GRAFT CLOSED



BALLOONS
DEFLATED,
GRAFT OPEN FOR
DIALYSIS



GEN 2 NO-NEEDLE ACTIVATION SYSTEM

ROA 996

ROA 997



- Keeps hand-held actuator secure in charger stand
- Eliminates need for battery replacement
- Sanitized with alcohol wipe.

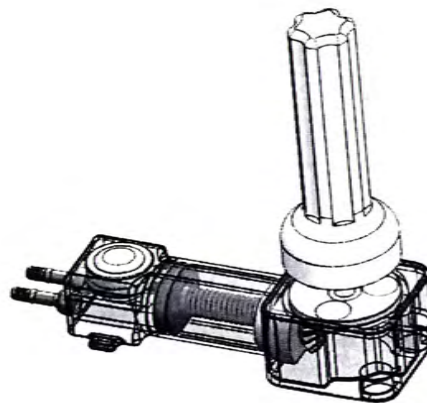
EXTERNAL ACTUATOR CHARGING STAND

- ✓ Externally activated with no skin penetration, no pain
- ✓ Easy to use and maintain in dialysis clinic
- ✓ No ongoing cost for dialysis clinic
- ✓ Rapid activation of HVS valves (inflation and deflation)
- ✓ No electrical charges through skin



NO NEEDLE ACTIVATION

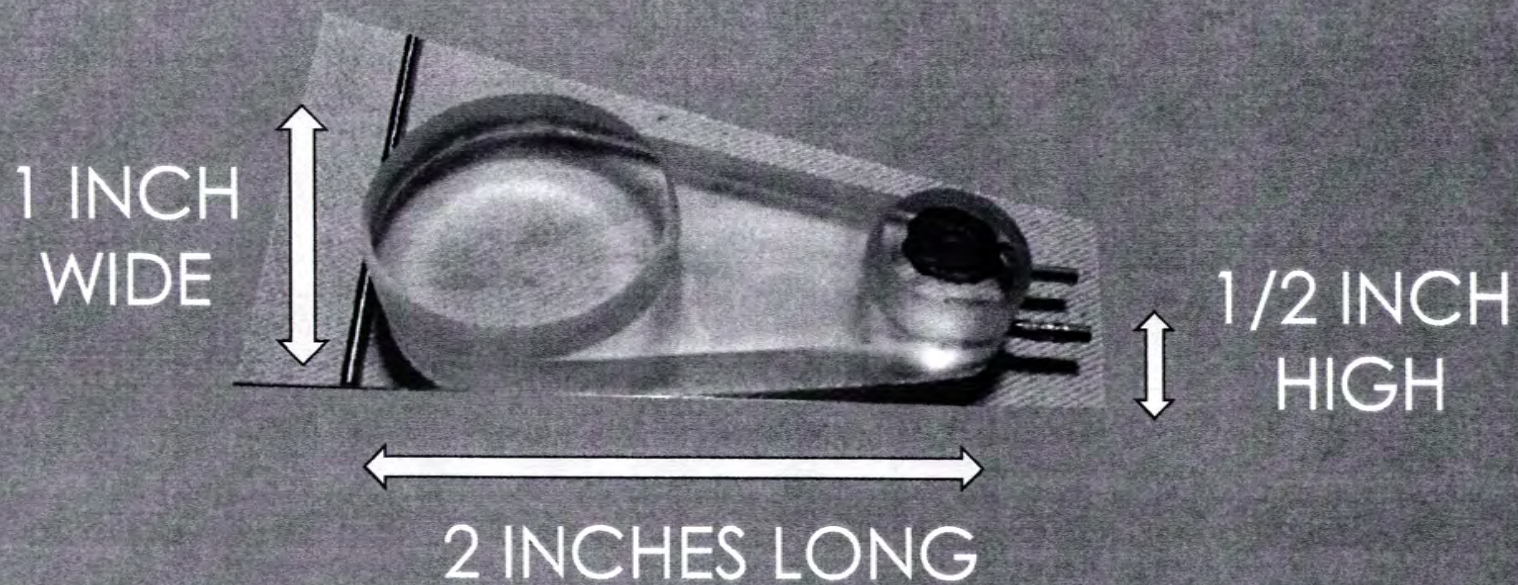
- External hand-held device auto-couples with internal disc with small magnets
- As a disc at the end of the external device turns, it activates the HVS device under skin



CONFIDENTIAL

MAGNETICALLY ACTIVATED COUPLING

ROA 1000



THE IMPLANTABLE CONTROLLER PROFILE



The CreatiVasc Protection behind its Opportunity

ISSUED



HEMOACCESS
VALVE SYSTEM

APPLICATIONS



US 7,025,741 (APR06)



US 8,114,044 (FEB12)



US 8,578,589 (NOV13)



US 8,764,698 (APR14)



US 8,790,288 (AUG14)



US TRADEMARK
APPROVED
3,720,250 (DEC09)



US 13/724736 (DEC12)



US 13/442448 (APR12)



US 14/346341 (SEP12)



US DOCKETED (FEB14)

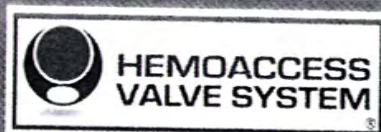


US APP. – GEN 2 (MAY14)

ROA 1002

HEMOACCESS VALVE SYSTEM® U.S. PATENTS

ISSUED



APPLICATIONS



GB 2,418,146 (JUL 07)



GB 2,418,146 (MAR 08)



GB 2,435,428 (AUG 11)



CA 2,524,008 (JAN 12)



CA 2,579,682 (SEP 14) ★



EU(PCT) 14/346341

ROA 1003

HEMOACCESS VALVE SYSTEM® FOREIGN / PCT PATENTS

HEMOACCESS VALVE SYSTEM PROJECTIONS: 2015 - 2019

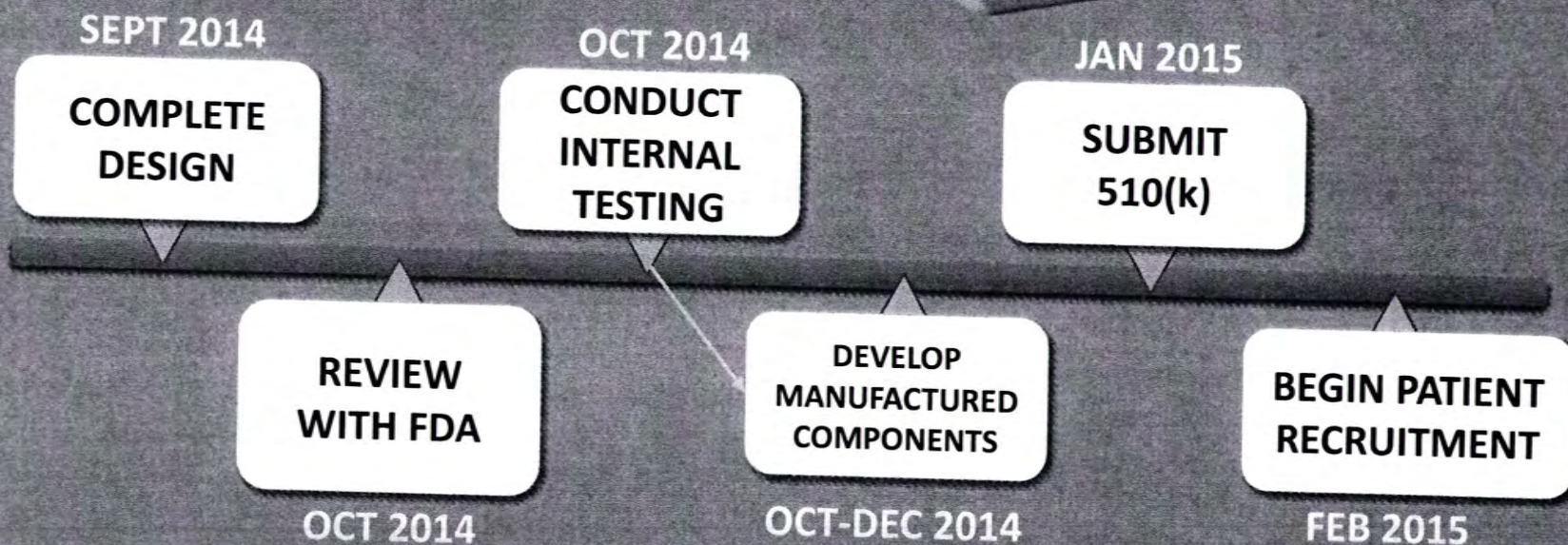
	2015	2016	2017	2018	2019
Total Projected AV Graft Devices Sold*	369,000	375,000	380,000	384,940	389,944
x Projected Placement Rate (Market Share)	0.0%	5.0%	20.0%	50.0%	80.0%
Total Projected HVS Devices Sold	0	15,000	76,000	192,470	311,955



100 DEVICES
NEEDED FOR
CLINICAL
TESTING

POTENTIAL VOLUME PROJECTIONS

ROA 1004



PROJECTED TIMING OF GEN 2 PIVOTAL STUDY

111

Could the Attorneys
Speak louder.

Mainly - Plaintiff lawyers

Need Copy of
Deposition Read
Brian McMurray

[Signature]
2/13/2024

PENGAD 800-631-6889	COURT'S
	EXHIBIT NO. <u>4</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>BB</u>
DATE: <u>12.13.25</u>	

Since only portions
were read, we will

have to play the recording
in court from the original.

Approximate time of testimony - 15 min.

[Signature]
2/13/25

① The three points
for Breach of Contract

② The Five points for
punitive or
Intentional Interference
with a contract

~~My R/L~~
2/13/25

PENGAD 800-631-6988	COURT'S
	EXHIBIT NO. 5
	IDENTIFICATION/EVIDENCE
	DKT.# 578
DATE: 2-13-25	



Do we have to have
an actual amount
for damages in
Question #2

Actual Damages:
or

Can we state all
attorney fees, court cost
and associated fees.

If not what is the
plaintiff's actual fees from
above.

Response:

You have to

make your decision

based on the evidence

presented in trial.

We cannot add to it.

Perjury

2/13/25

with 11's Additions

COURT'S
EXHIBIT NO. 7
IDENTIFICATION/EVIDENCE
DKT.# 143
DATE: 2-13-25

[illegible]

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John D. Feltman

1 (It is hereby stipulated and agreed 2 by and between counsel for the respective 3 parties that this deposition is being 4 taken in accordance with the South 5 Carolina Rules of Civil Procedure; and 6 that the deponent waives reading and 7 signing of this deposition transcript.) 8 - - - 9 JOHN D. FELTMAN, after having been 10 first duly sworn, was examined and 11 testified as follows: 12 - - - 13 EXAMINATION 14 - - - 15 BY MR. FEW: 16 Q Good morning, Mr. Feltman Wes Few. We've 17 never met before, I don't believe, have we? 18 A We have not, Mr. Few. 19 Q And thank you for being with us here by way 20 of Zoom. It's always better to do it in person but I 21 understand you're in Florida, I believe. 22 A I am. 23 Q All right. What part of Florida are you in 24 now? 25 A I live in North Palm Beach.	Page 4 1 Valve System, we'll call it? 2 A Uh, no. The answer is no, he did not. 3 Q I'm going to go over some rules that 4 Kirby's probably gone over with you already, but, 5 just to make sure we are clear on the record, some of 6 these questions are a little bit annoying, so forgive 7 me for that. And I'll also ask you to understand 8 that I will be asking some questions that might seem 9 impolite in a normal conversation, but, since it's a 10 deposition, we've got to get answers to some 11 questions that would -- I actually feel awkward 12 asking them but sometimes we have to ask them. 13 So are you able to understand my questions 14 and answer them truthfully today? 15 A Yes. 16 Q And are you under the influence of any 17 alcohol or drugs or anything that would impact your 18 ability to understand the questions and answer them? 19 A No. 20 Q The most important thing in a deposition, 21 since this is not a video deposition, is that we get 22 an accurate record that consists of fair questions 23 and accurate answers. Do -- you understand that, 24 right? 25 A Yes.	Page 5 1 Q North Palm. 2 And have you ever had your deposition taken 3 before? 4 A Yes. 5 Q About how many times? 6 A Oh, Lord, over the years probably three or 7 four. 8 Q Okay. Were they business-related cases? 9 What kind of cases were involved, if you 10 can remember? 11 A One was a divorce and the other were 12 business. 13 Q What was the most recent one? 14 A Probably, just thinking back, six or seven 15 years ago. 16 Q That was the -- there was the reference 17 made yesterday to some guy named Depoister that 18 brought a case in Arkansas. 19 A Yes. That was it. 20 Q And you got deposed in that? 21 A Yes. 22 Q That case was resolved, I think he said? 23 A Yes. 24 Q Okay. And did Depoister -- did he do any 25 work that had anything to do with the Hemoaccess	Page 6 1 Q So if you have any questions about my 2 questions, under our rules you have to direct them to 3 me, and I'll either rephrase the question or read it 4 back, in that manner. 5 Do you understand that? 6 A Yes. 7 Q And part and parcel of that is that you 8 can't get any input from Mr. Shealy or anybody else 9 if you have questions. And Kirby has the ability to 10 object to my questions but, if you understand the 11 question, you still have to answer it. 12 Do you understand that? 13 A Yes. 14 Q Okay. And I'll try to avoid getting into 15 anything that involves a privilege or other matters, 16 but, if we do, Kirby and I will take it up, most 17 likely, on the record and get it resolved. 18 So how much time did you spend getting 19 ready for the deposition today? 20 A Minimal. 21 Q Fifteen minutes? 22 A That sounds about right. 23 Q Okay. What is your mobile phone number 24 that you use? 25 A (404)931-6247.
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John D. Feltman

Page 8 1 Q How long have you used that number? 2 A Since I got the phone. I mean, many, many 3 years. That's been my cell number forever. 4 Q Going back to before 2014? 5 A Yes. 6 Q Okay. All right. 7 And what's your full name? 8 A John Dana Feltman. 9 Q And I'm digging into my cobwebs and I 10 recall that Tom O'Hanlan said you grew up in 11 Hartwell, Georgia; is that right? 12 A That's correct. 13 Q A bunch of people from Greenville have got 14 some prize duck hunting land over there, so you all 15 ought to tax them somehow for it and monetize it. 16 A Yeah. 17 Q What's your date of birth? 18 A February 6, 1948. 19 Q And did you go to high school in Hartwell? 20 A I did. 21 Q What year did you graduate high school? 22 A 1966. 23 Q And what sort of things did you do in high 24 school? 25 A You mean academically or do you mean...	Page 10 1 Q Yeah. Yeah. Okay. 2 So tell me about your professional life, 3 work life, after 1971, roughly, to, say, '79. Just 4 trying to break things up a little bit. 5 A I went to work in the early '70s as a 6 commercial real estate broker and then I got into 7 real estate development. 8 Q And so you got some type of licensing 9 credential from the State of Georgia related to real 10 estate? 11 A Correct. I have a real estate agent 12 license. 13 Q Did you ever have a brokerage license? 14 A No. 15 Q And there's no distinction between the 16 residential and the commercial side in Georgia? 17 A Not to my knowledge. 18 Q Yeah. I don't think there is in South 19 Carolina either; so... 20 Do you still hold any type of real estate 21 license? 22 A No. 23 Q During what period of time did you hold a 24 real estate license? 25 A In the early '70s.
Page 9 1 Q Well, I know you made good enough grades to 2 graduate. I think in extracurricular. Were you into 3 sports or, you know, that type of thing? 4 A Yes. I played football two years, I was on 5 the golf team for four years. 6 Q Okay. And where did you go to college? 7 A I beg your pardon? 8 Q I'm sorry. What did you do when you 9 graduated high school? 10 A I went to the University of Georgia. 11 Q Okay. And did you get a degree from 12 Georgia? 13 A I'm 25 hours short. 14 Q How long were you -- during what period of 15 time were you a student at Georgia? 16 A I started in the fall of '66, I was there 17 until, probably, '71. Then I left for awhile, went 18 to Atlanta with the work, and then I came back in 19 1979 for a year. And so two different periods of 20 time. 21 Q Lewis Grizzard wasn't there leading you 22 astray, was he? 23 A Never met the gentleman at the time. We 24 overlapped a little bit but he wasn't as well-known 25 as he is now.	Page 11 1 Q And where were you living in the early 2 '70s? 3 A In Atlanta. 4 Q Who were you working for? 5 A I started out working for a man named 6 Harvey Lewis who had a commercial brokerage firm, 7 and, after about a year there, I went out on my own 8 and started putting together some real estate 9 partnerships and doing some development. 10 Q Okay. So you really weren't -- 11 In Georgia is it like South Carolina, if 12 you were on your own, you have to be under the 13 supervision of a broker to still be acting as a real 14 estate agent? 15 So it sounds like you went into development 16 sort of full-time. 17 A I did. I was no longer acting as an agent. 18 Q What kind of development work did you do? 19 A We acquired a shopping center in 20 Snellville, Georgia and undertook to redevelop that 21 center, I bought some condominiums. And it was -- it 22 was an interesting time. We were going through the 23 '74 to '75 recession, which was hitting Atlanta 24 pretty hard, and we wound up buying some brand new 25 condominiums in Athens, converted them into rental

John D. Feltman

Page 12 1 apartments, things of that nature. 2 Q Where were you getting your capital from? 3 A From high net worth individual investors. 4 Q Okay. And how did you grow that network? 5 A One at a time. 6 Q Was it people that you met in Atlanta or 7 folks from back in Hartwell? 8 A No. People from Atlanta. 9 Q Uh-huh. And so how long did you continue 10 doing that type of -- 11 Those were buy and sell type deals, weren't 12 they? 13 A Well, we were buying. I don't recall us 14 actually selling anything. We were buying properties 15 to hold. 16 Q Okay. And then did you operate under some 17 type of corporate name at that time? 18 A We were initially known as Feltman & 19 Callaway. 20 Q Who's Callaway? 21 A He was a guy named Frank Callaway who I had 22 met. He also worked with Harvey Lewis. 23 Q So was it the situation that, due to the 24 recession -- that land values had gone down, and, if 25 people had the means, they were able to get some good	Page 14 1 A Yes. 2 Q Okay. The second divorce, what year was 3 that? 4 A I believe it was about 1984, thereabouts. 5 Q Okay. how long did you stay in Atlanta from 6 the early '70s going forward? 7 A Atlanta was my home base until two years 8 ago. 9 Q Okay. 2021? You left sometime after Covid 10 hit? 11 A Correct. 12 Q And are you still working in the field that 13 you were in over the last ten years or so? 14 A Well, the last 26 years I have been mainly 15 involved in health care, and, yes, I am still active 16 in that space. 17 Q Okay. Twenty-six years ago, then, you got 18 into health care. That would have been what? 1997 19 sometime? 20 A The first transaction I did was in 1996. 21 Q Okay. And tell me just a little bit about 22 that. 23 A I had been working prior to that as an 24 investment banker and I had resigned from that 25 position and I was looking for a project to get
Page 13 1 deals, and that's kind of what you took advantage of? 2 A Basically, yes. 3 Q And then what was the cut that Feltman & 4 Callaway were getting out of that? 5 A Well, it varied from deal to deal. 6 Q And then how long did Feltman & Callaway 7 exist? 8 A Callaway worked with me for about two years 9 and then we had a -- you know, I wasn't pleased with 10 him so we parted ways. 11 Q Okay. And did you continue to do the same 12 type of work? 13 A I did, up until about 1976 or '77. 14 Q What changed then? 15 A Candidly, I got blindsided by a divorce 16 and -- which, you know, affected me pretty hard. 17 Q Yeah. Did you have any children in that 18 marriage? 19 A Did not. 20 Q How many times have you been married? 21 A Twice. 22 Q And are you still married? 23 A Nope. 24 Q Okay. So married twice, divorced twice; is 25 that right?	Page 15 1 involved in. And a friend of mine in Texas 2 introduced me to a small medical device manufacturing 3 business and I met the founder of that company, and 4 he and I hit it off. Business-wise, he was doing 5 some very interesting work, so -- he needed some help 6 so I helped him raise some capital, and that was the 7 transaction that actually got me into the medical 8 device business. 9 Q Is it fair to say that your specialty, or 10 what you have been doing for the last 26 years, is 11 primarily related to identifying opportunities and 12 raising capital? 13 A And building and running companies in 14 several instances. I built four businesses during 15 that time frame. 16 Q Health care businesses? 17 A Yes. 18 Q What were the names of those? 19 A Well, the first one was the company in 20 Texas. It was called Future Matrix Interventional. 21 I did several rounds of capital raising for that 22 company including an institutional round in 1999, 23 and, when we closed that funding, the CEO, founder of 24 the company, invited me to join his board, which I 25 did.

John D. Feltman

Page 16 1 He then introduced me to a doctor in 2 Germany who had done a lot of consulting work with 3 him, and, with that gentleman, I then started a 4 company called -- that still exists. That became a 5 company called Celonova Biosciences. And we started 6 that company to acquire rights to and to develop a 7 polymer coating for implantable medical devices. And 8 then I wound up selling control of that company in 9 the spring of '04. 10 I then started another company. This was 11 an orthopedic medical device company called AOI 12 Medical, which later became -- oh, what did we change 13 the name of it to? Well, it was AOI. And we were 14 developing a new -- we had learned a lot about 15 balloon technology from the company in Texas which 16 did a lot of proprietary balloons, so I had an idea 17 to adapt one of those balloon technologies to 18 treating a condition called kyphosis, which is 19 osteoporotic spinal fractures. And so we did the R&D 20 in that company, took it all of the way through FDA 21 approval, and then moved on there. 22 Then I ultimately -- through all of that 23 time, I was on the board of the Texas company, the 24 manufacturing business, and had developed a very 25 close friendship with the founder, and I had a sense	Page 17 1 that he was looking toward retirement, so, you know, 2 on a handshake I made a deal with him to acquire that 3 business, and I went out and created Brookhaven 4 Medical as a vehicle to acquire that business and 5 putting the capital together to do that acquisition. 6 Q That was in -- what time period did that 7 begin, the acquisition of Future Matrix? 8 A It was, literally, a handshake deal. He 9 wasn't willing to sign a contract until I had the 10 capital assembled, which took me the better part of a 11 year, but I trusted him so I undertook the project 12 anyhow, and then, when I did, we entered into a 13 contract and consummated the deal. But that would 14 have been about -- I think it was 2014 when we 15 started that. It might have been 2013. 16 Q So when you say a capital raised, did you 17 have a law firm prepare all of the necessary 18 disclosures related to this one? 19 A Yes. 20 Q And that would consist of -- primarily, a 21 Private Placement Memorandum would be the ultimate 22 need; is that right? 23 A Yes. 24 Q And who did that work for you to raise the 25 money for the Future Matrix capital in the 2014 time	Page 18 1 period? 2 A That would have been -- Bob Altenbach, 3 Robert Altenbach, was my attorney during that time. 4 Q And are you still -- is he still doing work 5 for you? 6 A No. He's been retired about three years 7 now. 8 Q Okay. When did you first start doing work 9 with him? 10 A He and I were introduced, actually, in 11 1999. He wound up doing the closing of the 12 institutional financing that I had put together for 13 Future Matrix. 14 Q The first time? 15 A The first time. 16 Q And what was the actual business of Future 17 Matrix? What did they do? 18 A They were a -- technically, they were a 19 contract manufacturer of balloon catheters used in 20 peripheral vascular applications, and they also made 21 a lot of urology devices. 22 Q Like how many employees did they have in 23 1999? 24 A Well, when I met him in 1996, he had eight. 25 He had been in business three years. By 1999,	Page 19 1 probably 50 or so. 2 Q And what was this gentleman's name again? 3 A The founder of Future Matrix? 4 Q Yes. 5 A His name was Jim Passmore. 6 Q And the court reporter is going to want 7 some spelling of some of these words so why don't we 8 back up for a second. 9 P-a-s-s-m-o-r-e? 10 A That's it. 11 Q And then you also referred to a business 12 called Celonova. How is that spelled? 13 A C-e-l-o-n-o-v-a. 14 Q And you referred to something called 15 kyphosis. How is that -- 16 A That's a condition title. K-y-p-h-o-s-i-s. 17 Q And then you said something about osteo 18 spinal -- what was that word? 19 A Osteoporosis, I think, was the word I used. 20 Q Okay. So Mr. Passmore, did he -- so in 21 1999, you did the first -- no. You did a deal for 22 him in '96 when he had eight employees. What was the 23 amount of money that was raised at that time? 24 Roughly. I mean, it's a long time ago. I know that. 25 A It's been a long time ago. It's, maybe, in
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Page 20 1 the neighborhood of a million dollars, but I couldn't 2 swear to that. It was a relatively small amount. 3 Q And he maintained control of the company 4 or, at least, management, or he kept the -- as best 5 you can recall, what level of equity did he have 6 after that first round? 7 A He was probably still in the majority at 8 that point. 9 Q Over 50, as best you can recall? 10 A I'm sure he was, yes. 11 Q Okay. And then you did a second round in 12 '99; is that right? 13 A Correct. 14 Q Now, did you take any ownership interest in 15 Future Matrix at any point in time? 16 A He granted me some warrants as part of the 17 '99 transaction. 18 Q And did you ever -- what's the term in the 19 industry for -- 20 A Exercising them? 21 Q Yeah. 22 A No. I actually -- ultimately, when I put 23 Brookhaven Medical together to acquire Future Matrix, 24 I wound up assigning those warrants to Brookhaven 25 Medical.	Page 21 1 all of these funds had made some other less 2 successful investments, and all four of them wound up 3 going into receivership with the SBA who wound up 4 acquiring the warrants. 5 Q From what I've seen of the SBA and the 6 USDA, we should abolish all of it. 7 A I wouldn't disagree with you. 8 Q So that deal sort of ran its course by 9 around 2004, then, right, if they all got paid out on 10 the five-year plan? 11 A Their debt was all paid off, you know, in 12 full. 13 Q And so they had nothing left to convert, 14 then. Is that the way it worked out? 15 A Well, ultimately, when the deal -- when we 16 did the acquisition, I think -- and again, this has 17 been a long time -- the receiver for the SBA, you 18 know, was actually holding -- I'm trying to remember 19 the structure. But they had some interest in it and 20 I don't honestly recall if they ever exercised the 21 warrants or not, but, ultimately -- the SBA wound 22 up -- they didn't want to but they wound up being a 23 party to a -- 24 When we acquired the company, you know, we 25 paid some cash and some debt, and so we issued some
Page 21 1 Q And did they ever execute on them? 2 A No. 3 Q Okay. In 1999, what was the amount of the 4 fundraise and what do you recall about that? 5 A It was a round of debt financing. It was 6 convertible debt with warrants attached that was 7 funded by four different small business investment 8 corporations. And, as I recall, the transaction was 9 a little -- I think the deal was a little over 10 \$7 million. 11 Q And do you recall if they converted into 12 capital or did they just take the payout on the 13 convertible debt? 14 A Well, the loan, these were licensed -- 15 SPIC's that were licensees of the Small Business 16 Administration. And the format they had to conform 17 to was they had to make their investments as 18 five-year loans, and then they had their equity 19 kicker through their warrants. 20 The deal was a very successful deal. They 21 all wound up getting their loans repaid, and then, 22 ultimately, because of the -- the Future Matrix deal 23 was an extremely profitable deal for them but because 24 of other -- it was an interesting time. It was sort 25 of the end of the dot com era, and they had made --	Page 22 1 convertible debt. 2 Excuse me. It wasn't -- yeah. I think it 3 was convertible debt. We issued some convertible 4 debt and the SBA got a piece of that. 5 Q Okay. So the SBA tagged along on that 6 thing all of the way up until 2015 when you did the 7 third round and Brookhaven acquired it? 8 A Yes. That's correct. 9 Q I may be conflating or mixing up terms 10 but -- okay. 11 So a couple of follow-up questions. 12 You were licensed as a real estate agent 13 and then you said you were an investment banker. So 14 did you have some licenses through the SCC or FINRA? 15 A Yes. 16 Q You had the Series 7? 17 A Yes, I had the Series 7. 18 Q That was all you needed back then, wasn't 19 it? 20 A That's correct. 21 Q Now you've got to have acronyms behind your 22 name if you want to... 23 A Yeah. 24 Q Did you have anything other than the 25 Series 7 with the SCC?

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Page 24 1 A At one point I had the -- I think it was 2 called the 24. It was the General Securities 3 Principal license. 4 Q What about like insurance and annuities? 5 Did you ever have any licenses for those types of 6 things with the Insurance Commission? 7 A I did briefly. When I actually came back 8 to Atlanta in 1979, I worked for two years for the 9 Mass Mutual Agency in Atlanta, so I did have a state 10 of Georgia life insurance license. 11 Q And, roughly, what time period did you hold 12 the Series 7 license? 13 A I went to work for J.C. Bradford in Atlanta 14 in 1982 and I stayed -- that's when I first got my 15 Series 7 -- and then I was employed in that industry 16 through 1996. 17 Q And '96 is when -- 18 The opportunity with Passmore and Future 19 Matrix, did that sort of just carry you into a whole 20 different field? 21 A It did. 22 Q Okay. And did you let your Series 7 lapse 23 or what happened with that? 24 A I did let it lapse. 25 Q And what about the 24? Was that the same	Page 25 1 fate? 2 A Correct. 3 Q Bob Altenbach, what was his background to 4 learn how to do these investment deals? 5 A You mean as an attorney? 6 Q Yeah. I mean, you said you met him in '99 7 for the closing of FMI. Was he still in Atlanta at 8 that time? 9 A He was. 10 Q And who was he practicing with? 11 A When I met him, he was a partner in a firm 12 called Autak Rock. 13 Q Spell that one, please. 14 A A-u-t-a-k, I believe, Rock, R-o-c-k. 15 Q And that was a firm in Atlanta? 16 Was it a large firm or what do you -- 17 A If my memory serves, it was headquartered 18 in Omaha or someplace in the Midwest, but it was a 19 national law firm. 20 Q Okay. And he prepared all of the 21 investment documents, him or his team of people 22 prepared all of the investment documents for the -- 23 A The 1999 investment by the four SBSC's, 24 yes. 25 Q Okay. And then did you continue to work	Page 26 1 with him on other deals between '99 and the 2015 2 formation of Brookhaven? 3 A Yes. He was my lawyer from '99 on until he 4 retired. 5 Q And he was at a different firm, I think, at 6 some point in time; is that right? 7 A He did. He wound up becoming a partner at 8 Greenberg Traurig. 9 Q And then what was the -- is it the 10 Hutchison Law Firm? 11 A What about them? 12 Q Did he work for them? 13 A No. 14 Q Okay. Who is --there was some fellow named 15 Hutchins that sent some documents that were produced. 16 A I think you're referring to Fred Hutchison. 17 Q Yeah. What was his role in this matter? 18 A When I first met Fred, he was counsel for 19 our largest investor in Brookhaven Medical. 20 Q Who was that? 21 A That gentleman was named Brian McMurray. 22 Q When did you get to know Mr. McMurray? 23 A Around 2015. 24 Q All right. His name came up yesterday. 25 He's the fellow that owned Diaxamed; is that right?	Page 27 1 A I believe that's correct. 2 Q And what's his background, if you know? 3 A Brian owns a company up in -- I think it's 4 Pine Bluff, North Carolina, not far from Pine Hurst. 5 He owns a company called ATEX, A-T-E-X, Technologies. 6 Q And what does that company do? 7 A He develops and manufactures pretty 8 advanced textile components of medical devices. 9 Q Does he have an operational role in that or 10 is he just an investor with other people running the 11 company? 12 What's going on with ATEX now? 13 A The best of my knowledge, he's 100 percent 14 owner of it. 15 Q And like what kind of annual revenues does 16 it have? 17 A I have no idea personally but it's a fairly 18 significant business. 19 Q So he was a fellow that had know-how within 20 the medical healthcare field as well as access to 21 capital; is that right? 22 A Right. 23 Q And Fred Hutchison, is he a North Carolina 24 lawyer? 25 A Yes. He's in Raleigh.
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1 Q And Fred Hutchison has been the lawyer for
2 McMurray sort of the same way that Altenbach was your
3 guys'; is that right?
4 A The only thing I can swear to is he was
5 Brian's lawyer, you know, during that period of time,
6 but I had the sense they had had a long relationship,
7 but I never asked specifically.
8 Q Okay. So 2015, '14 and '15, you're working
9 on raising the money to effectuate the handshake deal
10 that you have with Jim Passmore; is that right?
11 A Correct.
12 Q And what type of sources of capital were
13 you anticipating you were going to need to call upon
14 in order to make that work? Were you looking to get
15 just one or two people that were going to swing it or
16 were you looking to put together a vehicle whereabout
17 you could make it available and call upon a lot of
18 different folks?
19 A Well, we were, ultimately, going to do
20 whatever we needed to do to get the deal done. It
21 was a combination of equity investment from a lot of
22 individual investors.
23 I managed to persuade a lot of the
24 stockholders of Future Matrix to stay in the new deal
25 and exchange their equity in Future Matrix for

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1 Brookhaven stock. And then, ultimately, we had a
2 pretty significant debt financing with Suntrust.
3 Q Okay. So what were the legal documents
4 that were prepared and used in order to handle the
5 equity side of that?
6 A As I recall, we ultimately wound up having
7 a PPM prepared.
8 Q Was that by Altenbach?
9 A It would have been, yes.
10 Q Okay. And what else was involved in the --
11 Well, you mentioned Suntrust provided.
12 What was the structure of the debt financing that
13 they provided?
14 A They, ultimately, gave us a \$17 million
15 loan. This was, effectively, a leverage buyout.
16 Q Okay. There must have been some pretty
17 strong revenues coming off of Future Matrix for
18 Suntrust to get into it that heavily, though, right?
19 A Future Matrix had grown into a very nice
20 company.
21 Q Okay. What was Future Matrix's annual
22 revenues in that time period, if you can recall?
23 A I think at the time we acquired it, it was
24 doing around -- again, I'm estimating this, but it
25 was twenty-seven, twenty-eight million dollars.

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1 Q In, roughly, 2014?
2 A Correct.
3 Q And so did Mr. Altenbach handle the
4 communications and the interface with the Suntrust
5 people over the 17 million?
6 A Well, no. I was working with them,
7 primarily, in negotiating that. And Bob acted in his
8 role as our lawyer to document and close that
9 transaction.
10 Q That's what I meant. I was just trying to
11 figure --
12 Now, what about -- what role, if any, did
13 McMurray play in that transaction?
14 A In which -- in the original acquisition?
15 Q No. The 2015. The one that we've been
16 talking about just most recently that you just said
17 involved equity, and there was a PPM, and then 17
18 million was provided from Suntrust.
19 A We issued new equity to our investors. As
20 I recall, I think we did a Series A Preferred, and
21 McMurray was an investor in that offering. That was
22 part of the capital stack that we put together to do
23 the transaction.
24 Q And, approximately -- so there was a
25 Series A. What were the other options available to

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1 investors?
2 A The new money came in in the Series A
3 Preferred. We also had common stock. All of my
4 stock was common stock as founder's stock. And, if I
5 recall correctly, the existing Future Matrix
6 investors who stayed in the deal, I think, we -- the
7 offer we made them was to exchange their stock for
8 common stock.
9 And then, as we were putting the
10 transaction together along the way, I had met Steve
11 Johnson and we liked -- we were intrigued by what he
12 was doing in CreatiVasc, so we wound up -- he needed
13 some support and we were intrigued by the work he was
14 doing, so we wound up doing a transaction to acquire
15 CreatiVasc. And, for the CreatiVasc acquisition, we
16 made a commitment to fund their R&D work for a period
17 of time to their shareholders. And we acquired the
18 old equity -- we acquired the equity of CreatiVasc,
19 their shareholders, in exchange for a Series B
20 Preferred, which was junior to the Series A.
21 Q So the money -- I'm trying to put all of
22 this together. The money that you raised, since it
23 was Series B, I guess it was part and parcel of the
24 same opportunity as the Series A; is that a fair
25 statement?

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1 A Well, it was an opportunity --

2 I think it's a fair statement to say that

3 the owners of CreatiVasc had made a significant

4 investment in CreatiVasc but they had, basically, run

5 out of gas, CreatiVasc had.

6 At the time we met them, they needed

7 funding. We agreed to provide funding to them for --

8 I think we made a commitment to fund it for three

9 years, which we did, but, in exchange for that, we

10 wanted to own it. So a condition of the transaction

11 was that they had to agree to, you know, exchange

12 their CreatiVasc equity for new Series B equity in

13 Brookhaven, and that was all part and parcels.

14 When we wound up having the closing and

15 acquired Future Matrix, we, simultaneously, acquired

16 CreatiVasc as well. It was all tied up in one

17 transaction.

18 Q Okay. So there was one Private Placement

19 Memorandum done for all of that fundraiser?

20 A That's my recollection, yes.

21 Q And McMurray was on the consumption side of

22 that one. Is that a fair statement, or were his

23 people involved in preparing the PPM, or was he just

24 someone that was putting his money into it?

25 A He was just someone putting his money into

it.

2 Q And so Brookhaven --

3 So what happened to CreatiVasc?

4 A After the closing?

5 Q Yes.

6 A We kept our commitment to CreatiVasc to --

7 I think over the three-year period, we had agreed to

8 fund about \$5 million, and I think, ultimately, at

9 the end of the day, we funded a bit more -- a little

10 bit more than that. But, you know, CreatiVasc was an

11 R&D project at that point and we -- you know, we gave

12 Steve pretty free reign, you know, to run his

13 business.

14 Q But from a legal perspective -- I'm trying

15 to get the entity straight.

16 So there was CreatiVasc Medical. I believe

17 initially it was an LLC, then it was changed to

18 Incorporated, and that's what you guys acquired in, I

19 think, March of 2015. Does that sound about right?

20 A That sounds about right, yes.

21 Q And then there's an entity called

22 Brookhaven Vascular.

23 So I'm just trying to put the shells in

24 the -- you know, to see what shell replaced a prior

25 shell, if you know what I mean.

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1 A Well, I think what actually happened there

2 was just a matter of branding. We were building the

3 Brookhaven Medical brand so we were actually building

4 a website at that time, and we just decided to --

5 just for, really, branding purposes, to change the

6 name to Brookhaven Vascular.

7 Q So did CreatiVasc -- was there a separate

8 entity formed called Brookhaven Vascular and then

9 CreatiVasc was merged into it or did CreatiVasc just

10 change its name, I guess, at whatever, the Secretary

11 of State's office, to become Brookhaven Vascular, or

12 do you remember?

13 A I, honestly, do not recall the mechanics of

14 how that was accomplished, but it was -- but I do

15 recall that it was nothing -- nothing more than a --

16 you know, than a branding exercise.

17 Q And what you mean by that, I'm assuming --

18 because of your background, when you say nothing

19 more, you just mean that there was no financing

20 involved in that particular name change, it was just

21 a name change.

22 A That's correct.

23 Q So the owners of CreatiVasc immediately

24 after -- we'll call it the 2015 closing -- does that

25 sound fair --

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1 A Okay.

2 Q -- okay -- the owners were the Series B

3 investors and who else?

4 A The owners of CreatiVasc?

5 Q Yeah.

6 A Well, all of the owners -- all of the

7 stockholders in the original CreatiVasc exchanged

8 their CreatiVasc stock for Series B Preferred stock

9 in Brookhaven Medical. So yes, they have been --

10 obviously, were shareholders in Brookhaven Medical.

11 Q Okay. And so then Brookhaven Medical was

12 the owner of Brookhaven Vascular, which then held all

13 of the -- help me understand that, if you can.

14 A Well, Brookhaven Medical, basically, was a

15 holding company and it had two wholly-owned

16 subsidiaries at that point. One was the company in

17 Texas, the contract manufacturing business, and the

18 other was CreatiVasc, which became Brookhaven

19 Vascular.

20 Q And was Bob Alten (sic) the person that

21 would have been involved in the name change as well?

22 A Bob Altenbach?

23 Q I'm sorry. Bob Altenbach. I do that

24 frequently.

25 A That's quite all right.

Page 36 1 Yes. In fact, when we did the closing, Bob 2 had actually left Greenberg Traurig and had come on 3 board as in-house general counsel for our company, so 4 he was working for us full-time. 5 Q For Brookhaven? 6 A Correct. For Brookhaven Medical. 7 Q So what remains of Brookhaven Medical? 8 A The only thing remaining is Brookhaven 9 Medical, Inc. itself, which we have kept. We wound 10 up shutting down CreatiVasc. Well, we stopped 11 funding it. We wound up selling the contract 12 manufacturing business and then Mr. McMurray had 13 certain rights to acquire our rights remaining at 14 CreatiVasc, which he exercised. So that left us -- 15 The only thing he had remaining as an asset 16 was two different notes payable to us over time from 17 the company that acquired the contract manufacturing 18 business, and we have kept the legal entity alive for 19 the sole purpose of receiving those note payments 20 which have about another two years to run. And I'm 21 sure that once we finally receive final payoff on 22 those notes, we'll probably shut down Brookhaven 23 Medical, Inc. 24 Q Okay. So the contract manufacturing 25 company is synonymous with what used to be Future	Page 36 1 ability to kind of help guide us through them, Bob 2 Altenbach still has access to all of this stuff, 3 right? 4 A I believe so, yes. 5 Q Brookhaven Medical would have it within 6 their records, right? 7 A I can't swear to that. Again, it's been a 8 long time and we've not -- you know. 9 Q Well, certainly the PPM is available, 10 right? I mean, that has to be... 11 A I'm sure it is. 12 Q Yeah. And then the second investment that 13 McMurray made that you just described a minute ago 14 where you think he, maybe, obtained some extra 15 rights, maybe some things over and above what a 16 typical Series A stockholder may have gotten, you 17 think that was -- was that pursuant to that same 18 Private Placement Memorandum or was there some other 19 -- 20 A I honestly don't recall specifically, but, 21 to the best of my recollection, that was something 22 that had to do with his second round of investment. 23 Q So the totality of that deal was 17 million 24 from Suntrust, right? 25 A Correct.
Page 37 1 Matrix; is that right? 2 A That's correct. 3 Q Okay. 4 MR. FEW: By the way, we can take a break 5 at any point in time so just let me know if 6 anybody needs to take a break. 7 BY MR. FEW: 8 Q Okay. The rights to acquire were held by 9 McMurray. Was that by virtue of him holding Series A 10 or something else? 11 A Brian's company, ATEX, had been involved in 12 helping CreatiVasc with the development of their 13 product, their device, and he -- I'm trying to 14 recall, this has been a long time -- but he had made 15 an original investment in our Series A Preferred and 16 then he, subsequently, made a second investment in 17 that Series A Preferred. And I'm not sure about this 18 but I think, as part of that transaction, he 19 negotiated some rights that if we ever -- and again, 20 I don't recall the details, but somewhere along the 21 way in consideration of that second investment I 22 think he got some rights. But I'm not 100 percent 23 sure of that, of the timing of that. 24 Q So in terms of tracking down all of these 25 legal documents, which I greatly appreciate your	Page 38 1 Q And then how much was the equity portion? 2 A Between the common value that was exchanged 3 from existing Future Matrix shareholders and the 4 Series A that we raised, we, ultimately, raised a 5 total of about \$35 million of which 17 million was 6 the Suntrust debt. 7 Q So help me understand the distinction 8 between what was exchanged and what was Series A. 9 And maybe another way for me to ask it is, how much 10 new money came in by way of the Series A? 11 A I don't recall the specific number but it 12 was probably on the order of \$10 million. Something 13 in that range. 14 Q So what were the basic terms of the 15 handshake deal that you had with Passmore? To come 16 up with \$27 million? 17 A No. We had an agreement. We had put a 18 price on the deal and it was, actually, a multiple of 19 EBITDA. And I think, if memory serves, we were 20 acquiring the company for six times EBITDA. 21 Q And what did that quantify to, if you can 22 recall? 23 A It was close to \$30 million. 24 Q And that was -- he had other shareholders. 25 Did some of them want to be cashed out and the others

Page 40 1 stayed in? Is that how it worked? 2 A Yeah. Some of them -- he had, I don't 3 know, 40 or 50 shareholders, and most of the big ones 4 stayed in the deal and a lot of the small ones cashed 5 out. 6 Q So the big ones stayed in and became owners 7 of Brookhaven Medical holding company stock. 8 A They received, in exchange for their Future 9 Matrix stock -- as I recall, I think we issued Series 10 A Preferred to that, because, otherwise -- 11 They had the right -- the terms of the deal 12 with Future Matrix was a combination of cash and 13 debt. I think we were paying -- again, if memory 14 recalls, I think -- I would have to refresh myself on 15 this, it's been eight years -- but, basically, the 16 original terms of the acquisition, I think, were five 17 dollars in cash and one dollar in convertible debt. 18 And the majority of his shareholders, I wound up 19 convincing them to take -- instead of taking cash, 20 basically leave their cash in the deal in exchange 21 for Series A Preferred in Brookhaven Medical. 22 Q And that has turned out to be -- that's 23 been a good deal? 24 A It was a very -- the company was profitable 25 and we grew the company, the manufacturing side of	Page 42 1 challenging product to manufacture. We were having 2 difficulty recruiting -- it was very tedious but 3 required very skillful operators to manufacture this 4 particular balloon, and, you know, we were having 5 trouble keeping up with capacity. 6 And then, on the other side of the house, 7 we -- in the course of installing our NetSuite 8 system, which was one of the things we had determined 9 that we wanted to do and Suntrust insisted that we do 10 it and we wanted to do it ourselves, we uncovered a 11 quality issue going back 10 years for a really basic 12 product, but it required us to make some significant 13 changes in putting, you know, more expenses on, et 14 cetera, et cetera. And, long story short, we kind of 15 had to go overboard to get that issue fixed, and, as 16 a result, our earnings -- our revenues didn't drop 17 but our profits did. 18 And we had -- we tripped a coverage 19 covenant, just barely tripped a coverage ratio 20 covenant, of EBITDA to our debt. And I was first 21 assured by our banker -- because we never missed a 22 payment, we were always on time, you know, we were 23 making money and we had identified the issue and we 24 were fixing the issue and we were coming back -- and 25 I was assured initially by Suntrust that they were
Page 43 1 the business, even more, and, by the time we sold the 2 company, it had about 35 million in revenue. 3 Q When did you all sell Future Matrix? 4 A We sold it on -- I'm looking at the date -- 5 June 4, 2018. 6 Q And you're saying that the note payable 7 remains and Brookhaven Medical is still receiving 8 payments from the new owners? 9 A Correct. 10 Q Roughly, how much are you all getting per 11 month on that? 12 A It's -- the payments are quarterly. 13 Q And what are the quarterly payments? 14 A I don't honestly recall what the total is. 15 Again, I'd have to go back and dig that up, but it's 16 not -- you know. 17 Q Did you all get a pretty good cash amount 18 upfront? 19 A No, we did not. That was -- you know, it 20 was a little bit of a forced transaction. 21 Q How so? 22 A We had run it -- 23 The company, if anything, we were growing 24 too fast. We had some products that were very 25 successful products but one in particular was a very	Page 43 1 working with us, and then about -- a few months 2 later, I was informed by my banker that they had 3 taken the loan away from him, and they had, 4 basically, told us they wanted us to pay off the 5 debt. So -- and, unfortunately, the worst time to 6 refinance a loan is when you have just come off your 7 two worst quarters in a decade, and so that put us in 8 kind of a box and kind of forced us to seek to sell 9 the business. 10 Q Damn bankers. 11 A Yep. And it didn't have to happen because 12 we were -- but they did. 13 Q Yeah. So Suntrust got cold feet and backed 14 out. 15 A They did. 16 MR. FEW: Let's take a little break. 17 --- 18 (Recess in the proceedings.) 19 --- 20 BY MR. FEW: 21 Q Mr. Feltman, are you sort of quasi-retired 22 now? 23 A I tell friends all of the time I'm one of 24 these people that's too dumb to retire. 25 Q Yeah. I have that going as well as the

Page 44 1 fact that I'll be working 'til I die, too, so -- 2 You said a minute ago that you all let 3 Steve run the company. You were referring to Steve 4 Johnson, right? 5 A Correct. 6 Q And, at some point in time -- I believe I 7 understood him to give his viewpoint of what was 8 related to the ownership, that Diaxamed came in and 9 took over what, by that time, would have been 10 Brookhaven Vascular; is that right? 11 A I think that's correct, yes. 12 Q I think he said that was -- I had to help 13 him jog his memory, you know, which we often have to 14 do, but then we looked at some assignment documents 15 and it looks like that that closing must have 16 occurred on December 30, 2016. Does that sound about 17 right to you? 18 A Yeah. That sounds about right. 19 Q He testified that he worked for Diaxamed 20 for about three months and then he was -- he used the 21 term cut off -- by Brian McMurray, and that McMurray 22 had flown down here, told him he needed to meet him 23 at 5:00 and that he was terminated. Did you still 24 have any ownership interest in the remains of 25 CreatiVasc at that point in time?	Page 46 1 neighborhood of two hundred, two hundred and fifty 2 thousand dollars. It wasn't a lot but it was what it 3 was, and that cash just went onto our balance sheet 4 and was used to, you know, pay our bills and, you 5 know, continue to distribute our obligations to our 6 note-holders and to our Series A Preferred. 7 Q What about any of the -- so that everybody 8 that was owner of CreatiVasc stock got Series B 9 Preferred in Brookhaven Medical; is that right? 10 A The shareholders of CreatiVasc, when we 11 made the acquisition, exchanged their CreatiVasc 12 stock for Series B Preferred in Brookhaven Medical. 13 Correct. 14 Q What is the value of those Series B shares 15 in Brookhaven Medical? 16 A Zero. 17 Q Explain to me as best you can the 18 distinguishing characteristics between the Series A 19 and the Series B stock in Brookhaven Medical. 20 A Well, just as a matter of the way we 21 structured the balance sheet, the Series A was our 22 most senior preferred, the Series B, which was issued 23 subsequent to that, was junior to the Series A, and 24 then, of course, the common stock we had was junior 25 to everything. And when we sold the company, there
Page 45 1 A Me personally? 2 Q Or Brookhaven. 3 A No. I don't think so. No, we did not. 4 Q Brookhaven was out as of 12-30-2016 when 5 McMurray exercised his options; is that right? 6 A If that was the date it was done, yes, that 7 would be the case. 8 Q Okay. And that transaction was handled by 9 Hutchison and, on your part to the extent he was 10 needed, Altenbach? 11 A Correct. 12 Q Okay. And there was, presumably, no -- the 13 investment documents weren't quite so complicated, 14 there was no PPE needed, because McMurray was just 15 coming in and saying I'll take this 16 CreatiVasc/Brookhaven Vascular opportunity for this 17 amount of money, and he got that and you all got out; 18 is that right? 19 A Well, he had the right to do what he did 20 for that stated amount of money and we didn't have 21 any way to -- we didn't have any way to stop it at 22 that point, so that's what we did. 23 Q Okay. So did Brookhaven get any -- what 24 did he pay and where did it go? How about that? 25 A It was all cash and I think it was in the	Page 47 1 wasn't enough to go around so the common got wiped 2 out and the Series B got wiped out. 3 Q And was there some type of reporting sent 4 out to those shareholders about that? 5 A Yes. Reporting was sent out and, actually, 6 we had to do a shareholder approval process to 7 approve the sale of the company. 8 Q How many Series A shareholders remain in 9 Brookhaven Medical, the holding company? 10 A I'm estimating this, but probably in the 11 neighborhood of 40 or 50. 12 Q And how much -- what percentage, roughly, 13 do you hold in the Series A? 14 A I hold none in the Series A. Zero. 15 Q So do you have any ongoing interest in 16 Brookhaven Medical? 17 A I was an owner of some of the convertible 18 debt. 19 Q The convertible debt that came into 20 existence on or about March 5, 2015? 21 A Correct. 22 Q So there was Suntrust money, there was 23 Series A money, there was common stock exchanged, and 24 there was also convertible debt? 25 A Yes. Just to go down the stack, we had

Page 48 1 senior debt in Suntrust, we had convertible debt just 2 below them, and then, on the equity side, we had 3 Series A Preferred, we had the Series B Preferred, 4 and then we had common. 5 Q How many people owned convertible debt? 6 A I don't recall the precise number. I mean, 7 again, initially we issued, I think, 5 million as 8 part of the acquisition of Future Matrix, and then, 9 subsequently, we sold to investors. We raised about 10 another two, two and a half million, of convertible 11 debt; so, when it was all said and done, we had a 12 little over 7 million in convertible debt 13 outstanding, and that probably represented, 14 approximately, 30 or 40 people. 15 Q So all of this was set forth in the PPM and 16 people had the option of taking convertible debt, 17 Series A, Series B, or common? 18 A In the original transaction, yes. The 19 acquisition of Future Matrix, yes. That was all set 20 forth in a PPM. 21 Q And that PPM, was it amended or was it 22 prepared initially with the knowledge that it was 23 also going to involve scooping down and picking up 24 CreatiVasc? 25 A I haven't looked at that document in years	Page 50 1 lead-up to the March 5, 2015 closing when you all 2 became the owners of CreatiVasc? 3 A Steve and I met at a medical device 4 conference in Atlanta where he was making a 5 presentation and he was looking for capital, and I 6 was in the audience and I was impressed and intrigued 7 by what he was working on, and it involved some 8 pretty advanced balloon technology, and our company 9 in Texas was not just a contract manufacturer but we 10 also were very -- we had a great bunch of engineers 11 that were really good at developing some very 12 advanced proprietary balloon technologies, and I felt 13 like there was a good chance that we could have added 14 value to that. So I met Steve, we chatted, and, I 15 think, two days later I drove up to Greenville and, 16 you know, spent a half a day with him, and, you know, 17 consulted with a couple of my advisers after that, 18 and everybody thought it was an interesting project, 19 so we then fairly quickly proceeded to get into 20 serious discussions and made that part of our deal. 21 Q When you say advisers, who all would that 22 have included? 23 A Different industry people. I mean, I don't 24 profess to be an expert in dialysis so I had talked 25 to people that did know something about dialysis.
Page 49 1 but I believe that document, in its final form, I 2 believe it did include the acquisition of CreatiVasc. 3 Because we had one closing, again, where on the same 4 day we acquired both Future Matrix and CreatiVasc. 5 Q And then, you know, when you have to bring 6 this many parties together through a party, if that 7 closed on March of 2015, how long before that would 8 you have expected the PPM to have been finalized? 9 A I don't recall. 10 Q I mean, it would have had to have been a 11 period of several months, at least, right? 12 A Again, I don't recollect. I mean, it was a 13 fairly complex transaction. But we had -- we had 14 negotiated the acquisition of CreatiVasc with its 15 shareholders, and the trigger event for closing that 16 was the closing of the Future Matrix acquisition, 17 because Future Matrix was our profitable business 18 that was driving, you know, the rest of the 19 enterprise. 20 Q You negotiated with Steve Johnson, right? 21 A And his shareholders. 22 Q Uh-huh. 23 A And his board. 24 Q So tell me about how you first met Steve 25 Johnson, and then what do you recall about the	Page 51 1 Q What was the extent of -- Brian McMurray 2 was already involved, though, right? Because he was 3 going to be an investor in the Future Matrix; is that 4 correct? 5 A Again, this has been a long time, but my 6 recollection is at that point in time I was still 7 putting together the finishing up the capital raised 8 for Brookhaven Medical. In fact, I know I was, 9 because I had not completed that task yet. And, if 10 memory serves, I think Steve already knew Brian, and 11 Brian may have even been doing -- through his 12 company, ATEX, he may have actually been doing some 13 work with Steve on the CreatiVasc project, although 14 I'm not sure about that. But, you know, I think I 15 met Brian through Steve. 16 Q Okay. But, and pardon me if I misremember 17 something from earlier today because that happens, 18 but Brian was a pretty significant Series A investor 19 in Brookhaven Medical, right? 20 A He was. He became one, yes. 21 Q Did you say he was the largest? 22 A Well, I was the largest shareholder, he was 23 the second largest shareholder. 24 Q You were the largest Series A? 25 A No. I was the largest -- on a fully

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Page 52 1 diluted basis -- my stock was all common stock, but, 2 if you looked at the voting stock, I was the largest 3 shareholder. 4 Q Voting stock consisted of what? 5 A Both Prefers and the common. They all 6 voted on an as-converted basis. 7 Q And was he the second, you think? 8 A He was the second largest, yes. 9 Q And so like what percentage of the common 10 stock did you hold in Brookhaven Medical? 11 A I don't recall what percentage of the 12 common I held, but my percentage of the total equity 13 was around 35 percent. My percentage of the common 14 would have been more than that but I always looked at 15 it in terms of the overall voting percentage. 16 Q But that doesn't include the convertible 17 debt that you held, does it? 18 A No. And, of course, that was debt so it 19 had no voting rights. 20 Q So you had some Series A and some Series B? 21 A I had no Series A nor any Series B. I only 22 had common and some convertible debt. 23 Q Got you. Okay. 24 And you never converted the convertible 25 debt so it never became voting.	Page 54 1 I'm still getting paid on. 2 Q The little bit of the -- 3 A I held some of the Brookhaven convertible 4 debt and those -- I'm still getting payments on those 5 notes for another seven quarters. 6 Q And all of this would be spelled out in the 7 PPM, right? 8 A To the best of my knowledge, yes. 9 Q Or any amendments to it, if there were any, 10 correct? 11 A Yeah. If there were any. Like I said, we 12 later issued some additional convertible debt and 13 that was a debt, you know, so I'm sure we -- whatever 14 was appropriate to do we did. 15 Q Yeah. You relied on Altenbach for that, 16 right? 17 A Altenbach and our outside counsel. We 18 continued to use Greenberg as our outside counsel. 19 Q So how would we be able to determine when 20 you all started preparing to put together that deal, 21 you know, to do this fundraiser for -- 22 You said there was a handshake deal 23 sometime in 2014 with Passmore, right? 24 A Yes. 25 Q And then how could you -- is there any
Page 53 1 A Correct. 2 Q And then what percentage of the total 3 equity, roughly, did McMurray hold? 4 A Probably in the neighborhood of nine or 5 ten percent. 6 Q And do you recall what -- I mean, he had to 7 put cash in for all of that, right? 8 A He invested in two tranches. He initially 9 invested \$2 million and then, awhile later, he put 10 another two million in for a total of four million. 11 Q And this second two million is where you 12 seem to have recollected that he also acquired some 13 rights to gobble up CreatiVasc/Brookhaven Vascular; 14 is that right? 15 A I can't testify to the specifics of that, I 16 just simply don't recall, but my sense is that that 17 was part of that second investment on his part. 18 Q So is he still getting some of the proceeds 19 from the debt on the Series A that's coming in from 20 the new owners of Future Matrix? 21 A Yes, yeah. He's getting quarterly payments 22 on that. 23 Q Okay. You don't have anymore interest in 24 Brookhaven Medical, though, do you? 25 A Other than the debt -- little bit of debt	Page 55 1 records you could look at to determine when you 2 started communicating with Steve Johnson? Because 3 you met him at this conference in Atlanta. 4 Is that typically held at the same time of 5 year? Do you remember? 6 A I don't remember. I mean, it was an annual 7 meeting, I think, of the Southeast Medical Device 8 Association, which used to be held in Atlanta every 9 year -- I think they move it around the Southeast 10 now -- but I don't recall the specific time. 11 Q Well, that would have been sometime in -- 12 the meeting almost had to be in 2014, wouldn't it, 13 since that's... 14 A Again, I don't recall the specifics. I 15 mean, it was -- but, you know, as I said, Steve and I 16 made -- you know, I made the trip to Greenville just 17 a couple of days after that to follow up on it and we 18 were communicating after that on an ongoing basis. 19 Q Do you have any -- like a Google calendar 20 or anything like that that would indicate when those 21 dates were? 22 A Probably not. 23 Q Okay. 24 A It's probably two computers ago. 25 Q Yeah. So much of this stuff is in the

Page 56 1 cloud nowadays. You never know. 2 How do you keep your calendar? 3 A I just use the Microsoft Outlook. Oh, 4 excuse me. Not Microsoft -- well, what is it? I'm 5 on it right now. 6 Q They switched it over to Exchange so you 7 have to pay them every month now. 8 A Yeah. Actually, I'm not sure what it is, 9 to be candid with you. 10 Q Okay. What e-mail addresses are you using 11 currently? 12 A I still use 13 johnfeltman@brookhavenmedical.com. And I also use 14 johndfeltman@gmail.com. 15 Q J-o-h-n-d Feltman? 16 A Yeah. 17 Q How long have you had that gmail? 18 A A long time. I don't recall specifically 19 but many years. 20 Q And then -- I know it's in the documents, 21 but your Brookhaven, is it john.feltman or just 22 straight -- 23 A Just johnfeltman. 24 Q Okay. Are you still a Georgia Bulldog fan? 25 A These are good days to be a Bulldog.	Page 58 1 A To the best of my knowledge, I'm not sure I 2 ever met Mr. O'Hanlan. I don't have any recollection 3 of ever meeting him. 4 Q You became aware of Sealevel's involvement 5 and their contractual relationship with CreatiVasc at 6 some point, right? 7 A Steve shared with me at some point that -- 8 he told me a little bit about Sealevel, that they had 9 approached him, that they wanted to be involved in 10 our project and felt like they could create a product 11 that could help us with what we were doing, to -- as 12 I recall, their device was being developed to help us 13 open and close the CreatiVasc graft using magnets, 14 and that there was -- 15 It was my understanding -- and again, to be 16 candid, I don't think I ever actually saw the -- in 17 fact, I know I never saw the document, never reviewed 18 the document, I was letting Steve handle this -- but 19 it was communicated to me by him that, you know, they 20 had volunteered and wanted to be involved, they felt 21 they could develop the product, but -- and the deal 22 was that if they developed a product that worked, 23 that then there would be further negotiation to 24 discuss what the pricing would be. But the reality 25 was they never developed a product that worked; so...
Page 57 1 Q You guys are riding high now, aren't you? 2 Getting all cocky. Well, you know, it looks like you 3 all are going to continue. I saw the over/unders 4 came out and they're the only team that's 11 and a 5 half, so even Bama is only like 10½. 6 A Yeah. 7 Q Okay. What involvement -- let's talk about 8 your involvement in CreatiVasc once Brookhaven got 9 involved in March of 2015. 10 You met with Steve Johnson, right? 11 A Yeah, I met with Steve. We -- you know, I 12 kept in frequent touch with Steve but I kept him on a 13 pretty loose leash for, probably, the first 18 months 14 or so. He appeared to be making progress, but, you 15 know, I was not involved in the day-to-day operations 16 of what he was doing. I might have seen him, maybe, 17 once every month or two. 18 He did sit on our board at Brookhaven 19 Medical -- that was part of the transaction that we 20 did with the CreatiVasc shareholders, we agreed to 21 give them a board seat on Brookhaven's board, and so 22 he did attend our quarterly -- but, you know, I sort 23 of let him do his thing. 24 Q You met Tom O'Hanlan at some point in time, 25 right?	Page 59 1 Q When would Steve have started working with 2 Mr. Altenbach? 3 A Well, after we acquired CreatiVasc, I'm 4 sure Steve had some interaction with Bob, but not a 5 lot. I mean, again, as I recall, I think Steve was 6 continuing to use a Greenville law firm and I know he 7 was using a Greenville patent attorney for his IP 8 work, so, you know, we were -- again, we were giving 9 Steve free reign to, you know, run his business. 10 Q Did you ever have any communications with 11 the patent attorneys here in Greenville? 12 A I met them a couple of times, yes. 13 Q Jason Jennings? 14 A I don't recall that name, to be specific, 15 but... 16 Q What was the reason for you having meetings 17 with the patent attorneys in Greenville? 18 A Steve wanted me to meet everybody, and they 19 were a pretty impressive law firm, patent firm, so -- 20 yeah. It was nothing -- we never -- I don't think 21 we -- in fact, I know, in the small number of 22 meetings I may have had with them, the patent 23 attorneys, I don't think I ever had any discussion, 24 whatsoever, about the Sealevel product. 25 Q Other than just a meet and greet for him to

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Page 60 1 say, hey, here are the guys we're using, presumably 2 that was for you to give the okay to continue using 3 them as opposed to moving it to whoever you might 4 have had a relationship with in Atlanta or elsewhere, 5 right? 6 A Again, it was really kind of a classic meet 7 and greet, you know. I don't recall any substantive 8 business discussions at all. 9 Q Did you ever have any discussions with them 10 about any of the particular patents that were being 11 prosecuted? 12 A With respect to what? 13 Q With respect to anything. With respect to 14 inventorship, ownership, assignment, contractual 15 rights, anything of that nature. 16 A Well, be more specific with respect to any 17 patents. On what? 18 Q Oh. On the Hemoaccess Device. I'm -- only 19 with respect to the CreatiVasc enterprise. I'm 20 not -- does that help? 21 A Yeah. I don't recall any specifics. I 22 mean, they may have given me a briefing on the status 23 of the IP estate but, honestly, it's been so long I 24 don't recall any specifics. 25 Q Bob Altenbach was your in-house lawyer at Page 61 1 that time, right? 2 A He was. 3 Q Would he have had any conversations with 4 the lawyers regarding the prosecution of the patents? 5 A Not to my knowledge. 6 Q He could have, though, right? 7 A I'm not aware of any but, theoretically, he 8 could've. 9 Q Okay. He was knowledgeable about those 10 types of things given his background, right? 11 A Bob is a securities and corporate lawyer, 12 he really was not an IP lawyer. 13 Q Yeah. But he understood -- I mean, he had 14 prepared PPM's that referred to patent applications 15 and trademark applications for many years, hadn't he? 16 A Sure. 17 Q Did there ever arise any concerns over the 18 ownership to the right to practice the Hemoaccess 19 Device that CreatiVasc was developing? 20 A Not that I recall. 21 Q When you say 18 months, that's really -- it 22 wasn't but 21 months before McMurray came in and 23 exercised his right to take it over, correct? 24 A That sounds about right. Yeah. 25 Q Let me help us out with dates.	Page 62 1 There's a letter from Bob Altenbach that 2 says that Brookhaven got involved, closed with 3 CreatiVasc on March 5, 2018. That's the date I've 4 been referring to throughout this deposition, or at 5 least I think that's the date I've been referring to. 6 Does that sound about right? 7 A Sounds about right. 8 Q I'm trying to avoid getting into the damn 9 exhibits with a Zoom deposition just yet because it 10 gets so cumbersome. 11 And then 12-30-2016 was the date that the 12 other documents, I would represent to you, showed 13 when assignments were executed assigning the 14 Brookhaven Vascular rights over to DiAxamed. Does 15 that sound about right? 16 A That sounds about right. 17 Q And so that's not quite 22 months that you 18 all were involved as owners of the 19 CreatiVasc/Brookhaven Vascular Enterprise. 20 Is that a fair statement? 21 A Well, yeah, I think that's what those dates 22 add up to. 23 Q And so you testified that Future Matrix 24 started -- and their engineers started assisting and 25 consulting with CreatiVasc regarding the balloon Page 63 1 aspects of the Hemoaccess Device. Is that an 2 accurate statement? 3 A Yes. 4 Q And other than a general awareness of that, 5 what was your knowledge of it? 6 A My knowledge of what? 7 Q Of the goings on between the engineers in 8 Texas and CreatiVasc to make the balloon commercially 9 viable, workable, whatever term we want to use for 10 it. 11 A Well, I was certainly aware of it. In 12 fact, I'm pretty sure that -- early on in our 13 discussions I'm pretty sure that I actually took 14 Steve out to Texas to meet the Future Matrix people 15 and to meet Jim Passmore and the engineers. And, to 16 be candid, I was looking to them for input, you know, 17 on the viability of the project. 18 Q And Passmore was required to stay on for a 19 period of years, I guess? 20 A No. 21 Q But he did stay on? 22 A After we bought it? 23 Q Yeah. 24 A No. No, and it was kind of sad. Right at 25 about the time we closed the deal, Jim got diagnosed
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Page 64 1 with Alzheimers. 2 Q I'll send you a -- 3 A I handed him a good check and he didn't get 4 to enjoy it. 5 Q Yeah. Better enjoy every day. 6 I'm going to send you a link to my 7 Alzheimers fundraiser ride now that you brought that 8 up. 9 A Okay. It's a horrible disease. 10 Q Just kidding. Hopefully I can remember, 11 but yeah, it is terrible. 12 So when you say you took Steve out to Texas 13 to meet with Passmore, that would have been before 14 the closing, then; is that right? 15 A Absolutely. 16 Q Yeah. And just bear with me, but like what 17 was the weather like? I'm trying to figure out what 18 time of year this would have been. 19 A I don't recall, to be honest. 20 Q What did Passmore and his engineers -- if 21 you took them out there before the closing, they must 22 have had some favorable opinions about the potential 23 or else you wouldn't have gone through with it, 24 right? 25 A Well, I think it's fair to say everybody	Page 65 1 were assigned to put time in on that and how much 2 time they did put in on it? 3 A Not specifically, no. 4 Q Do you recall any of the specific engineers 5 or like the lead engineer that would have been 6 involved? 7 A I think at that stage we probably had a 8 half a dozen people in the meeting initially to see 9 Steve's presentation and to see the project. I don't 10 recall specifically who got assigned to liaise with 11 Steve but -- and it was probably different people at 12 different times, but... 13 Q Well, what was the -- and I'm probably 14 asking kind of a similar question, but we're sort of 15 drilling down into this -- what do you recall of like 16 the length of the courtship between Steve -- between 17 the time that you met him at the Atlanta conference 18 and doing the closing on or around March 5, 2015? 19 A It was probably less than a year. 20 Q Okay. And then you came here and spoke at 21 like the SC Bio Conference? Do you recall that? 22 A I do. 23 Q Were you -- you were on the program as a 24 speaker, I guess? 25 A I was.
Page 65 1 thought it was an exciting -- I'm talking about the 2 CreatiVasc product, the Hemoaccess Valve, that it -- 3 it could have been -- if it was successful, it could 4 have been a game changer. It was addressing a very 5 big market. And again, it's a -- you know, these 6 dialysis grafts are just terrible, and these poor 7 people go through an awful lot of grief, because they 8 clog up all of the time and have to go through these 9 de-clotting procedures; so, you know, we -- but, having 10 said that, it was a complicated device, too, and 11 there were a lot of hoops that had to be jumped 12 through, so it was, by no means, a sure thing, but we 13 felt like it was worth a fair shot. And, at the 14 time, we thought it was something that we could 15 afford to support in the overall context of our 16 business. 17 Q So you made the introduction of Steve to 18 Passmore and some of the technical R&D team, the 19 engineers out there with expertise in balloons, and 20 then he would have worked with some of those people 21 afterwards in the development of the balloons for 22 CreatiVasc/Brookhaven Vascular. Is that a fair 23 statement? 24 A I think that's correct, yes. 25 Q Do you have any idea about how many people	Page 66 1 Q Okay. And what do you recall about that? 2 A It was an audience full of young people who 3 were budding medical device entrepreneurs, and I 4 remember the -- you know, I was speaking, generally, 5 about the challenges of doing that, and my advice to 6 them, I remember, was to think twice, that it was 7 harder than it looked, and it always took longer and 8 cost more, and you were going to put your lives and 9 your marriages at risk, and unless you were prepared 10 to do that, you probably should think about doing 11 something else. 12 Q Once burnt, twice shy, right? 13 A Yeah. 14 Q That would have been after the closing that 15 you came up here and spoke, or do you recall? 16 A That was after the closing. 17 Q Okay. So that would have been sometime in 18 2015. 19 A I think that's correct. 20 Q Was it shortly thereafter? Do you recall 21 or... 22 A I don't recall specifically. 23 Q And you met the people that worked up here, 24 Frank Patterson -- 25 A Yes.

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Page 68 1 Q -- and the CFO, Ron Young? 2 A Yes. 3 Q And then the young Clemson grad, Lindsey, 4 did -- she was employed during the time period that 5 you all were funding the operation? 6 A I think she was, yes. 7 Q And then eventually, you know, not long 8 after that, McMurray exercised his rights to take it. 9 That's what I'm understanding you to tell me today. 10 A Well, the last year before we closed the 11 sale of Future Matrix we had pretty much shut down 12 operations of CreatiVasc. I mean, it had become 13 apparent to me that the product just wasn't getting 14 done, it wasn't hitting the benchmarks, and we had 15 honored our commitment to fund it to a certain level. 16 But, frankly, by that point, we were -- we were under 17 stress in our core business and so we weren't funding 18 it. And that didn't make Steve happy but, you know, 19 it was what it was. 20 Q Were you paid any type of salary for your 21 role with Brookhaven? 22 A Yes. 23 Q And what was that? 24 Were you the CEO? 25 A I was the Chairman of the Board and the	Page 70 1 Q And she was part-time as well? 2 A She was. 3 Q Roughly, what was she being paid? 4 A In the neighborhood of 120. 5 Q Any other salaries you can recall? 6 A No. 7 Q And the other major overhead just would 8 have been office space rent? 9 A Correct. 10 Q You all signed a lease for how long? 11 A We did a sublease and I don't recall the 12 specific terms, but I think it was -- well, initially 13 we were in a small office and then -- and we would 14 have been happy to have stayed there but the landlord 15 wanted to consolidate the whole floor for a large 16 tenant, so we got pushed out there, so we had to 17 relocate. And then we did a sublease and I think the 18 term of the sublease was around four years. 19 Q And you all had what? Five or six offices? 20 A It was more than that. 21 Q Okay. You said that for the last year that 22 you all had sort of shut down CreatiVasc, and I guess 23 that means you're referring to the 2016 time period; 24 is that right? 25 A Correct.
Page 69 1 CEO. 2 Q And what was your annual salary for 2016? 3 A I think my salary was 300,000. 4 Q And did it remain at that level? 5 A To the best of my recollection, yes. 6 Q And Altenbach was a full-time employee? 7 A Yes. 8 Q And what was he paid? 9 A I'm not sure about this but I think we were 10 paying him about 200,000. 11 Q What were the other overhead salaries of 12 significance for Brookhaven Medical? 13 A Well, we had a chief financial officer and 14 I think we were paying him about 180, maybe 200. 15 Q What was that guy's name? 16 A His name is Mark Morin, M-o-r-i-n. 17 Q And then you all had overhead for an office 18 in Atlanta too, right? 19 A Right. And we had a regulatory affairs 20 vice president who handled all of our FDA work, and 21 she was involved in doing a lot of that support for 22 CreatiVasc. 23 Q What was that person's name? 24 A I knew you were going to ask me that. 25 Grace Powers.	Page 71 1 Q To the -- 2 A We didn't fund it anymore. 3 Q Okay. So that means that -- I'm trying to 4 synch up the testimony and not pitting testimony or 5 anything like that, but Johnson testified yesterday 6 that he had gone unpaid for a period of time -- I was 7 thinking that was before you all came in -- and it 8 didn't seem that they got backpay. So you all would 9 have carried their salaries, probably, through 2015? 10 A That sounds about right. I don't 11 specifically recall but that sounds about right. 12 Q So, I mean, some people can stick around 13 without being paid for a little while but the 14 operation kept going on so someone must have picked 15 up the funding. Did McMurray do that? 16 A That's possible. I don't recall the 17 specifics on it but that is -- that is a possibility, 18 yes. 19 Q So if that were the case, then McMurray's 20 influence, if you will, or involvement was present 21 even before he officially bought it out on 22 December 30, 2016? 23 A Yeah. And now that you raise that, I 24 think -- he was still interested in the project and 25 now I'm -- it's coming back to me now, that I think

Page 72 1 he may have actually set up Diaxamed to continue 2 funding that project. And then, ultimately, when he 3 exercised his right -- 4 We had some continuing rights and ownership 5 but, ultimately, when we were selling our business, 6 then that's when Brian exercised his right to -- you 7 know. 8 We were going to be in a minority position 9 in Diaxamed, or in the CreatiVasc enterprise, and, 10 honestly, I was kind of hoping we could hang on to 11 that, because if CreatiVasc had worked, it would have 12 been a great deal of money, and I was kind of hoping 13 we could hold onto that as a lottery ticket, but 14 Brian had the rights and he exercised them, and so we 15 didn't get that option. 16 Q So -- you had testified that you kind of 17 let Steve run it. And did you ever have any 18 discussions with Steve about the development work 19 being done by my client, Sealevel? 20 A Only at a very superficial level. 21 Literally, as I told you earlier, when he shared with 22 me that he had been approached by them, that they 23 wanted to be involved in the project, they thought 24 they could create a device to open and close the 25 graft, and that -- you know. Basically they -- they	Page 74 1 Q Okay. The Customer Supply Agreement with 2 Sealevel, have you ever seen that, that you can 3 recall? 4 A I do not recall ever seeing it. 5 Q So if you never saw it, then you may have 6 never been aware of the terms included in it? 7 A That would be correct, yes. 8 Q What about anybody on the acquisition side 9 of Brookhaven? Who would have been familiar with the 10 contracts that were being acquired when you got 11 involved with CreatiVasc? 12 A Well, I'm sure Bob Altenbach would have 13 reviewed -- as part of our due diligence, would have 14 reviewed any outstanding contracts that were in place 15 at that time. 16 Q So since you've never saw it, I'm assuming 17 you're not familiar with any action that may have 18 been taken to terminate it by CreatiVasc or 19 Brookhaven Vascular or Diaxamed. 20 A That's correct. I cannot testify to that. 21 Q Do you have any specific recollection of 22 there ever being any discussion about terminating the 23 agreement? 24 A I only vaguely remember Steve telling me 25 that, you know, he had terminated it because the
Page 73 1 wanted to come to the party and Steve was willing to 2 let them work on it, and if they could create a 3 product that worked, we would've been interested in 4 using it. But, again, they never successfully 5 created a product that worked. 6 Q So let me show you -- before I do that, let 7 me ask you a question. 8 Have you provided any documents to 9 Mr. Shealy to be produced in the lawsuit? 10 A Not to my recollection. I don't think I've 11 been asked to. 12 Q And then in terms of who has retained 13 Mr. Shealy, a great decision, by the way, but who is 14 primarily responsible for that? Is that you? 15 A No. 16 Q Brookhaven Medical? 17 A I'm not exactly sure. It's my 18 understanding that Mr. Shealy is counsel for our P&O 19 coverage, or insurance carrier in some respect, but 20 I'm not sure of the specifics of that. 21 Q Okay. All right. 22 So you don't think that -- Kirby wasn't 23 retained by you or Brian McMurray, as far as you 24 know. 25 A That's correct.	Page 75 1 product didn't work. 2 Q Steve testified yesterday that he was not 3 aware of any termination of the contract under 4 Section 12(a), which has three different options for 5 terminating, so -- but you're recalling that he told 6 you that he had terminated it? 7 MR. SHEALY: Object to the form. 8 You may answer. 9 THE WITNESS: Again, I have never seen the 10 contract. My recollection is that he told me, 11 and I'm not sure he even used the word 12 terminated, but that the relationship wasn't 13 working because the product wasn't working. 14 BY MR. FEW: 15 Q Tell me what you recall about the decision 16 that Brookhaven -- that would have been you -- and 17 who else would have been involved in sort of deciding 18 to pull the plug on the CreatiVasc enterprise? 19 A Well, it was nothing, more or less, than -- 20 Steve wasn't hitting his benchmarks either, and it 21 kept getting longer and longer and longer, and, to be 22 candid, you know, we just lost confidence in the 23 project, and, you know, were concerned that it just 24 wasn't going to work, period. And by that point, 25 when we did pull the plug on it, we had other bigger,

Page 76 1 pressing financial concerns of our own that we were 2 having to deal with, so we didn't have the luxury of 3 continuing the CreatiVasc project even if we had 4 wanted to. 5 Q So nobody raised the issue with you or 6 Altenbach of any ongoing obligations by way of 7 contracts that CreatiVasc may have had with Sealevel 8 of other third parties. 9 MR. SHEALY: Object to the form. 10 And, Wes, I may have misunderstood the 11 question. If you're asking about 12 communications between Altenbach and other 13 folks in the company, that seemed to be seeking 14 to elicit attorney/client privileged 15 communication. 16 MR. FEW: Yeah. I don't think it falls 17 within attorney/client privileged communication 18 to ask about the -- any communication regarding 19 the status of a contract. If he gets into 20 strategies for dealing with it, that may be 21 another thing, but the actual fact of the 22 contract and the obligation and the 23 responsibilities that are associated with the 24 contract and their decision to pull the plug is 25 not something that's privileged, in my world.	Page 78 1 according to his testimony, was probably 2 sometime in the 2016 time period? 3 MR. SHEALY: Okay. 4 THE WITNESS: I think I can simplify this. 5 The answer is it was not a consideration because 6 we were not -- I was not aware of any 7 outstanding obligations whatsoever, so that 8 didn't, in any way, shape or form influence our 9 decision to pull the plug, if you put it that 10 way, on continuing to fund CreatiVasc, because I 11 simply wasn't aware of any. 12 BY MR. FEW: 13 Q Good enough. 14 MR. SHEALY: That solves that. 15 MR. FEW: Let's do take a break until 16 12:51, and then I'll be back -- we'll be back 17 to -- 18 Is that enough time or do you all need 19 more? 20 THE WITNESS: No. That's fine. 21 MR. FEW: Let's go -- we'll go to 12:52. 22 -- -- 23 (Recess in the proceedings.) 24 -- -- 25 BY MR. FEW:
Page 77 1 So I think it's -- at that level, it's a fair 2 question. 3 I mean, if you want to instruct him not to 4 answer, that's -- if you all want to take a 5 break and talk about it -- 6 Do you need to do that? 7 MR. SHEALY: I hate to hold you up, I mean, 8 but... 9 MR. FEW: I'm probably at not a bad spot to 10 take a break anyway, and then try to come back 11 with a wrap-up round. 12 MR. SHEALY: Okay. Let me talk to 13 Mr. Feltman about whether to assert a privilege 14 there. 15 Okay. Just so I'm clear, the question is 16 were there any communications with 17 Mr. Altenbach regarding the status of contracts 18 with Sealevel and the decision to pull the 19 plug. 20 MR. FEW: It didn't have to necessarily be 21 Altenbach. I think I may have used his name in 22 the question but my question is, was there any 23 awareness of obligations and to what extent was 24 that considered, if at all, when the decision 25 was made to pull the plug on CreatiVasc, which,	Page 79 1 Q I'm going to show you a document. Before I 2 do that, let me ask you some questions. 3 Yesterday Mr. Johnson testified that he 4 signed a Nondisparagement Agreement when he was 5 terminated on or about March 30, 2017 by Brian 6 McMurray. Do you have any knowledge of that, 7 Mr. Feltman? 8 A I do not. 9 Q So if he was asked to sign a 10 Nondisparagement Agreement given the ownership 11 timeline that's been developed that we understand 12 whereby McMurray and Diaxamed were in control of all 13 of the CreatiVasc/Brookhaven Vascular assets, that 14 would have been something most likely negotiated by 15 his people, right? 16 A I don't have any knowledge or recollection 17 of that. No, sir. 18 Q So you didn't ask for it and Bob Altenbach 19 didn't ask for it -- 20 A No. 21 Q -- as far as you know. You know you didn't 22 ask for it. 23 A I know I didn't ask for it. 24 Q So were you ever made aware of my client 25 sending a communication to Brookhaven asking to be

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1 reimbursed for the time that they had committed to
2 the project?

3 A Yes.

4 Q Okay. What do you recall about that?

5 A I recall we received an invoice. I don't
6 recall if it was sent first to Steve and then he sent
7 it to us or if it was sent direct to us, but, one way
8 or another, we were made aware of an invoice from
9 your client. And that's when I picked up the phone
10 and asked Steve -- and said, what's this? And he
11 told me that, you know, there had never been -- there
12 was never any agreement to cover your client's R&D
13 expense, that there was an agreement, as we
14 understood it, that if they created -- your client
15 created a device that worked, that we were interested
16 in using it. But again, it's always been represented
17 to me that they never got a product that worked, so
18 it was all a moot point, so we felt like your client
19 was asking us to pay for their work that failed to
20 create a successful product. And that's why I told
21 Mr. Altenbach to send them a letter saying, no, we
22 don't think -- we don't think we owe you this; so --
23 and that was the end of it.

24 Q Well, let me show you the letter that I'm
25 aware of. So I'm going to share my screen. Bear

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1 with me. I'm going to go with just one page of --
2 Tell me if you can see that document,
3 Mr. Feltman.

4 A Yep. I see it.

5 Q And I can try to...

6 A And I can read it.

7 Q Okay. It's a letter dated June 28, 2017.
8 And before I even ask you to read it or anything, is
9 this the letter that you -- do you think this is the
10 letter that you were testifying about a minute ago
11 when you told Mr. Altenbach sort of how to respond?

12 A Yes.

13 Q So my question is this. You didn't have
14 any ownership anymore in CreatiVasc and neither did
15 Brookhaven, so why did this not get referred over to
16 DiAxamed?

17 A Well, I have no idea. But again, your
18 client had sent an invoice to us and that's why we
19 responded.

20 Q Okay. Would you agree with me that any
21 invoice that was sent related to a contract with
22 CreatiVasc in June of 2017 would have been the
23 responsibility of DiAxamed, who was the owner of all
24 of the CreatiVasc assets and obligations? Right?

25 MR. SHEALY: Object to the form.

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1 You may answer.

2 THE WITNESS: I can't testify to that one
3 way or the other. I mean, as you can see, at
4 the end of the first paragraph of
5 Mr. Altenbach's letter we asked him that if
6 there was any agreement supporting the invoice,
7 if it existed, to send it to us, and, for what
8 it's worth, your client never did.

9 BY MR. FEW:

10 Q Well, but...

11 A But, yet, he felt compelled to send us an
12 invoice, but -- you know.

13 Q Why was the response not to say you need to
14 talk to DiAxamed because we no longer own any part of
15 CreatiVasc?

16 MR. SHEALY: Object to the form. And to
17 the extent that that question calls for the
18 witness to reveal attorney/client
19 communications, I would instruct him not to
20 answer.

21 BY MR. FEW:

22 Q So answer if you can, Mr. Feltman, but, if
23 not, then...

24 A I have no idea.

25 Q Okay. So you agree with me, though, that

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1 you had nothing to do with the termination of Steve
2 Johnson on March 30, 2017, right?

3 A I believe that's correct. He was no longer
4 an employee of mine.

5 Q Right. Because neither you nor Brookhaven
6 had any interest, whatsoever, in CreatiVasc or
7 Brookhaven Vascular after December 30, 2016.

8 A I believe that's correct.

9 Q And whatever remained of CreatiVasc and
10 Brookhaven Vascular and their intellectual property
11 and their patent portfolio, trademark portfolio, was
12 acquired by DiAxamed.

13 A To the best of my knowledge, yes.

14 Q And I believe you said earlier that your
15 belief is that Brian McMurray was the 100 percent
16 owner of DiAxamed.

17 A Again, to the best of my knowledge, yes.

18 Q He's the 100 percent owner of ATEX. I
19 believe you said that, too, right?

20 A That's correct.

21 Q And he has the financial wherewithal to
22 not really need outside investors, correct?

23 A Well, yeah, I'm not privy to his personal
24 financials anymore -- well, I never have been -- but,
25 you know, I have always had the impression that that

Page 84 1 was the case, yes. 2 Q Okay. All right. 3 MR. FEW: So that's Plaintiff's Exhibit 10. 4 We'll keep the same numbers, just that one page. 5 BY MR. FEW: 6 Q You realize that if you all had told us in 7 June of 2017 that Diaxamed was the proper owner, you 8 might not have gotten sued in this case. 9 MR. SHEALY: Object to the form. 10 BY MR. FEW: 11 Q Do you agree or disagree with that, 12 Mr. Feltman? 13 A I don't have any comment. 14 Q You should be able to see a Nondisclosure 15 Agreement that was produced by Mr. Shealy's office in 16 this case. Were you aware of this Nondisclosure 17 Agreement between Sealevel and CreatiVasc? 18 A No. 19 MR. FEW: That will be Exhibit 12. 20 (Nondisclosure Agreement marked 21 Plaintiff's Exhibit Number 12 for 22 identification.) 23 MR. FEW: This is a duplicate of an exhibit 24 yesterday but I'm going to mark this 13 because 25 this one was produced, Kirby, by your office and	Page 86 1 THE WITNESS: Again, I don't understand 2 what's in this document. I've never read this 3 document. 4 BY MR. FEW: 5 Q Okay. You have no reason to doubt that 6 this was a binding obligation that CreatiVasc had 7 entered into prior to Brookhaven acquiring CreatiVasc 8 in March of 2015? 9 A Again, I have never reviewed this document. 10 Personally I don't have any idea. 11 MR. FEW: This is a two-page document that 12 we'll mark as Exhibit 14, a letter from Sealevel 13 with the attached invoice. 14 (Letter from Sealevel with invoice 15 marked Plaintiff's Exhibit Number 14 for 16 identification.) 17 BY MR. FEW: 18 Q Have you ever seen this? 19 A No. I've never seen it. 20 Q Do you think this is what you were advised 21 of by Mr. Altenbach, though? 22 A Well, again, I don't recall specifically 23 if -- 24 This was sent to -- yeah. This, 25 apparently, was sent directly to us, yeah. So yes,
Page 85 1 it has signatures of all parties. 2 (Customer Supply Agreement marked 3 Plaintiff's Exhibit Number 13 for 4 identification.) 5 BY MR. FEW: 6 Q Mr. Feltman, this is the Customer Supply 7 Agreement. I'm going to scroll through it and then I 8 think you -- you can tell me to stop, but you 9 testified that you've never seen this before and that 10 you weren't aware of the specifics; is that correct? 11 A Keep going. 12 That is correct. I don't think I have ever 13 seen this document. 14 Q You did have awareness of it to the extent 15 that Steve Johnson talked to you about it but you 16 just weren't aware of when it was executed or what 17 provisions were included in it; is that right? 18 A I've never personally seen this document 19 before. 20 Q But this document was the genesis of the -- 21 it was the result of the NDA, I guess, and this 22 was -- sets forth the rights of the parties between 23 CreatiVasc and Sealevel. You understand that, right? 24 MR. SHEALY: Object to the form. 25 You may answer.	Page 87 1 that would be the case. Yes. 2 Q This is the one where you confirm with him 3 and you told him to write the letter that we have 4 marked as Exhibit -- the first one I showed you 5 today -- I think it was 7 -- like two days after 6 this. 7 A Well, yeah. I think, as I testified, when 8 we got this, I'm sure the first thing we did was call 9 Steve Johnson and say what's this. 10 Q Now, it says, Diaxamed is not interested in 11 engaging and the Supply Agreement was not assumed by 12 Diaxamed. 13 Do you have any knowledge of that 14 allegation, that it was not assumed by Diaxamed? 15 A I do not. 16 Q What type of documentation do you think 17 would have existed to indicate the timeline of when 18 Brookhaven made the decision that you've talked about 19 today to sort of give up on CreatiVasc and Brookhaven 20 Vascular? 21 A I don't know. I remember we had an 22 off-site two-day planning session over at the 23 University of Georgia Continuing Center for 24 Education, and Steve was there, and we kind of had 25 everybody present in all aspects of our business.

Page 88 1 And Steve got up and gave a presentation with his 2 development timeline, his Gantt chart. 3 And he had, just the month before, given me 4 a briefing, and this time when he did this 5 presentation, he had moved a critical benchmark out a 6 full year, and that kind of did it for me. He didn't 7 tell me in advance he was doing that so it meant the 8 project was at least a year further away from 9 commercialization. And, you know, I don't recall the 10 precise dates of that but that was kind of the straw 11 that broke the camel's back for me, that, at that 12 point, I just lost faith in the project and in his 13 ability to execute on it. 14 Q Brookhaven would have some records to 15 indicate, you know, invoices paid to cover the travel 16 costs and so forth of doing that, that -- 17 A Well, I actually have no idea. I mean, I 18 haven't -- you know it's been eight years. I don't 19 know. 20 Q Is that the only time you all did that type 21 of retreat, or whatever? 22 A It was, yes. 23 Q Do you personally have any documents that 24 relate to the lawsuit? 25 A To this matter?	Page 90 1 communicated to me that we didn't have any obligation 2 to -- unless as, if and when they could produce a 3 product that was successful, that worked, and it was 4 represented to me that they never did. 5 Q So you just relied on what Mr. Johnson told 6 you was the scope and extent in terms of the 7 agreement with Sealevel. 8 A That's correct. 9 Q But you knew it wasn't a handshake deal, 10 right? 11 A Initially I did not. I mean, I -- if there 12 had been any material binding contract, I think I 13 would have been made aware of it before and probably 14 would have had to have approved it before that was 15 entered into; so... 16 Q Well, the contract that I showed you -- we 17 can go back to the screen share -- it was executed on 18 October 28, 2014, which was several months before 19 Brookhaven took the official legal interest in 20 CreatiVasc on March 5, 2015, right? 21 A If those dates line up, I would agree with 22 that, yes. 23 Q But there were some amendments that were 24 executed after that. Do you have any knowledge of 25 those amendments being executed?
Page 89 1 Q Yes. 2 A No. None. 3 Q Everything would be in the possession of 4 one of the Brookhaven entities; is that right? 5 A I have no idea, to be honest. 6 Q Okay. You have testified about what you 7 have understood Sealevel did or did not do, correct? 8 A I have testified as to what Steve Johnson 9 told me about that, yes. 10 Q Yeah. So the best you can, tell us what 11 you can remember about what Steve said and when he 12 told you, and those conversations. But, for right 13 now, for the purposes of this question, please just 14 focus on what your understanding was of what Sealevel 15 had done, what was successful, what was not 16 successful, so on and so forth.. 17 A Well, again, I don't have any recollection 18 of ever meeting your client or -- certainly not their 19 company. I remember Steve telling me that he had 20 been approached by them, that they knew about the 21 CreatiVasc project, that they had some ideas, they 22 thought they could be helpful, you know, and they 23 wanted to earn a seat at the table, if they could 24 develop the product; so, that led to whatever the 25 relationship was. But, you know, it was also	Page 91 1 A No, I do not. 2 Q Do you know if Bob Altenbach had any 3 knowledge of those amendments? 4 A Not to my knowledge. 5 Q Would you expect that Steve Johnson, or 6 whoever on behalf of CreatiVasc that was signing 7 amendments to agreements during the time period that 8 CreatiVasc was owned by Brookhaven, that Altenbach 9 would have been consulted? 10 MR. SHEALY: Object to the form. 11 You may answer. 12 THE WITNESS: The honest answer is I don't 13 know, and, I guess, not necessarily. But again, 14 if it were something that was material, I would 15 think yes. But again, I'm not aware of any of 16 these and I can't speak to any communication 17 that Steve may have had with Bob Altenbach. 18 BY MR. FEW: 19 Q McMurray was one of the large investors in 20 the CreatiVasc aspect of the 2015 fundraise, right? 21 A McMurray was a major investor in Brookhaven 22 Medical. At that point, I don't think he had made 23 any direct investment in CreatiVasc. 24 Q But, at some point in time, he put that 25 extra two million in and he kind of started to focus

Page 92 1 his sights on the CreatiVasc opportunity rather than 2 putting money into Future Matrix, which didn't really 3 need the capital at that point. Is that a fair 4 statement? 5 A No, I would not characterize it that way. 6 He certainly was interested in all of the elements of 7 our business. 8 Q Well, you seem to recall that he negotiated 9 himself into a position that enabled him to just buy 10 CreatiVasc from Brookhaven for, roughly, \$250,000 in 11 December of '16, right? 12 A Yes, but he did that, I think -- in the 13 context of it, he began to fund the CreatiVasc 14 project when we no longer had the interest or the 15 resources to do it; so... 16 Q And you believe that he was funding the 17 CreatiVasc project even before he did that closing on 18 December 30, 2016, right? 19 A I think Diaxamed was created prior to that, 20 yes. 21 Q Well, I mean, Diaxamed was just the vehicle 22 for McMurray to take ownership, right? 23 A That's my understanding, yes. 24 Q Do you know if the money what was provided 25 prior to the closing was pursuant to some type of a	Page 94 1 Steve Johnson. 2 A That's correct. 3 Q Were you aware of Frank Patterson spending 4 substantial time at the Sealevel facility? 5 A No. 6 Q All right. You understand and agree with 7 me that dedicating engineers to work on a project has 8 a cost associated with it, right? 9 A In general, yes. 10 Q Yeah. I mean, the numbers that I have 11 brought up -- 12 These are my client's Interrogatory 13 Responses setting forth the manhours that were 14 dedicated to the contract that, from your testimony, 15 CreatiVasc just walked out on without giving us 16 notice. So, similarly, the people in Texas would be 17 able to do the same thing, right? They would be able 18 to ask their engineers to account for their time and 19 assign a value of what that was worth in the 20 marketplace as well as calculating how much 21 out-of-pocket money they spent in reliance on that 22 contract, right? 23 MR. SHEALY: Object to the form. 24 THE WITNESS: Well, with respect to Future 25 Matrix in Texas, it was never that formal. I
Page 93 1 loan from Diaxamed or was it just provided as like a 2 handshake or a verbal agreement? 3 A I don't have any recollection of the 4 specifics of how that was done. 5 Q Because basically, after the two-day 6 conference in Athens, you guys weren't going to pay 7 Johnson and all of the salaries anymore, right? 8 A That's basically correct. I don't recall 9 the specifics of when we cut everything off but I do 10 remember that being the day that I made the decision 11 myself that, you know, I didn't want to support this 12 going forward. 13 Q The runway was getting longer and longer, 14 right? 15 A Correct. 16 Q Okay. And as far as my client is 17 concerned, you just relied on what Steve Johnson told 18 you. 19 A That's, essentially, correct, yes. 20 Q So you're not really aware of the scope of 21 work that Sealevel was engaged in with CreatiVasc 22 because you never saw the agreement, right? 23 A That's correct. 24 Q To the extent that you were aware of the 25 scope of work, you would have learned that through	Page 95 1 mean, we owned both companies so we weren't -- 2 it never got to the point where we entered into 3 any kind of internal contractual agreement, so 4 there was nothing specific there. 5 BY MR. FEW: 6 Q So to the extent that Steve Johnson was 7 mistaken in the way he chose to handle the contract 8 with my client as far as terminating it or any other 9 provision and related to it, that's what we're stuck 10 with, right? Because you relied on him to meet the 11 terms that were set forth in the contract, right? 12 MR. SHEALY: Object to the form. 13 THE WITNESS: I can't really add anything 14 to that other than yes, Steve was my only source 15 of information about this matter. 16 BY MR. FEW: 17 Q Okay. Give me one second, please. 18 What parts of the CreatiVasc Hemoaccess 19 Device prototypes did you ever see? 20 A I'm not sure. I mean, I certainly saw 21 certain -- I saw some prototypes, but, you know, 22 never a finished product. I mean... 23 Q Describe what you recall seeing. 24 A I seem to remember an early prototype where 25 they were using, actually, needles to inflate and

1 deflate the balloons which led to the desire to 2 develop an external valve activation system, and I 3 think that's what led to the relationship, whatever 4 it became with Sealevel, but I don't recall ever 5 seeing -- I don't recall seeing a functioning 6 prototype of it. 7 Q Did you ever see any prototype in any shape 8 or form that was the product of what my client had 9 prepared that you just described as the external 10 valve activation system? 11 A I don't specifically recall any. I mean, 12 it's possible I may have but I don't honestly 13 specifically recall seeing one. 14 MR. FEW: Ladies and gentlemen, that's all 15 that we have for today. 16 Mr. Feltman, thank you very much for your 17 patience and your attentiveness, and I think 18 we're done unless Kirby has questions for you. 19 MR. SHEALY: I do not have any questions. 20 Thank you. 21 THE COURT REPORTER: Mr. Shealy, can you 22 tell me what you need from this deposition? Do 23 you need a copy? 24 MR. SHEALY: Yes, I definitely need a copy, 25 but I don't need the rough draft or anything	Page 96
1 like that. 2 THE COURT REPORTER: Absolutely. 3 Okay. Thank you. 4 MR. SHEALY: Thank you very much. 5 --- 6 (Witness excused.) 7 --- 8 (Deposition was concluded at 1:35 p.m.) 9 --- 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 97

John D. Feltman

CERTIFICATE OF REPORTER

I, Mary Posey, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth, that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto affixed my official seal this 9th day of June, 2023 at Pickens County, South Carolina.

Mary F. Posey
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires
January 6, 2032

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With Mr's Additions

Brian McMurray

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-23-01310

Sealevel Systems, Inc.,)
Plaintiff,)
vs.)
CreatiVasc Medical, Inc.,)
DiaxaMed, LLC, successor in)
interest to Brookhaven Vascular,)
Inc., successor in interest to)
Brookhaven Merger Corp,)
successor in interest to)
CreatiVasc Medical, Inc.,)
John D. Feltman, and James S.)
("Steve") Johnson,)
Defendants.)



TELECONFERENCED ZOOM
DEPOSITION OF
BRIAN MCMURRAY

DATE TAKEN: Thursday, November 2, 2023

TIME BEGUN: 10:11 AM

TIME ENDED: 1:37 PM

LOCATION: Zoom

REPORTED BY: Jennifer H. Williams, RPR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
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ALSO PRESENT: Tim O'Hanlan of Sealevel

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Page 4 1 2 PROCEEDINGS 3 4 THE COURT REPORTER: Mr. McMurray, please 5 raise your right hand. Do you solemnly swear 6 the testimony you are about to give will be the 7 truth, the whole truth, and nothing but the 8 truth, so help you God? 9 THE WITNESS: I do. 10 11 BRIAN MCMURRAY, having been first duly 12 sworn, is examined and testified as follows: 13 14 EXAMINATION 15 16 BY MR. FEW: 17 Q Thank you. Good morning, Mr. McMurray. 18 My name is Wes Few. I'm a lawyer in Greenville, 19 South Carolina. And I don't think we have ever met 20 before, have we? 21 A Not that I'm aware of. 22 Q Okay. Could you tilt your screen perhaps, 23 because we're kind of catching the bottom portion, 24 just so that we can see each other completely if 25 that's not too much trouble. Thank you. And have	Page 6 1 arbitration and give a deposition for that 2 arbitration, or just one of those two? 3 A Both. 4 Q Both. Okay. So you had two times that 5 you were under oath on that one. And so that 6 resolved what? Sometime around 2017? 7 A '16 or '17. It all gets hazy in the past. 8 Q Understood. And then, so there's two 9 other times that you've been deposed. When was -- 10 going from the present into the past, when was the 11 next most recent one? 12 A Would be in the 2012, '13 timeframe. 13 Q And were you a party, or was one of your 14 companies a party to that case? 15 A Yes. 16 Q And where was that case pending? 17 A Washington, D.C. 18 Q Okay. 19 A Also an arbitration. 20 Q What's the connection to Washington, D.C.? 21 A That was where the agreement stated that 22 any disputes of the contract would be addressed in 23 arbitration. 24 Q Okay. All right. And so, in that case, 25 who was the party?
Page 5 1 you ever had your deposition taken before? 2 A Yes. 3 Q Approximately how many times? 4 A Three. 5 Q Three. And were you a party to any of 6 those cases or just a witness? 7 A A party. 8 Q Okay. When was the last time you had your 9 deposition taken? 10 A About five, six years ago. 11 Q And what kind of case was that? 12 A It was an international business dispute. 13 Q And were you a party individually, or was 14 it one of your companies? 15 A It was one of our companies. 16 Q Which one? 17 A McMurray Fabrics. 18 Q Where was that action pending? Do you 19 remember? 20 A It was in Washington, D.C. It was a -- 21 what do you call it -- arbitration. 22 Q Okay. Was McMurray Fabrics the Plaintiff 23 or the Defendant? 24 A The last one, we were the Plaintiff. 25 Q And then -- so, did you testify at the	Page 7 1 A McMurray and our company, McMurray 2 Fabrics. 3 Q Okay. And do you recall if you all were 4 the Plaintiff or the Defendant? 5 A We were the -- we were the Defendant on 6 that one. 7 Q Okay. 8 A And to be specific, we have a subsidiary 9 MFI Products at McMurray Fabrics, and they are both 10 parties to both of those -- 11 Q Got it. 12 A -- situations. 13 Q And McMurray Fabrics makes products for 14 the medical industry; is that right? 15 A No. We primarily make products for the 16 automotive, the specialty garment industry. We do 17 make some things for medical like liposuction 18 garments, fabrics and things like that, high-end 19 bathing suits, fiberglass composite fabrics and 20 other specialty highly-engineered fabrics. 21 Q And what is the relationship between ATEX 22 and McMurray Fabrics, if any? 23 A The only relationship is they're both 24 owned by my family. They're completely separate 25 companies.

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Page 8 1 Q Okay. And what does ATEX do primarily? 2 A ATEX makes long-term human-implantable 3 components out of fibrous structures. So we make 4 artificial arteries, skirts for heart valves, 5 sutures for rotator cuff repairs, other general 6 surgery items and things like that. 7 Q Very well. Okay. And then I think you 8 said you had three depositions, and you told me 9 about two. So when was the other one, if you can 10 recall? 11 A That would have been back in the late 12 80's. 13 Q And what did that involve? 14 A It might have been early 90's. It was a 15 contractual issue with a contract that we had with 16 one of our customers on pieces of equipment that we 17 both had invested in. 18 Q Okay. And when you say "we," are you 19 talking about McMurray Fabrics? 20 A Yes. 21 Q Okay. All right. Well, thank you for 22 that. I'm going to go back to a few background 23 things. Hopefully, won't have any issues with this. 24 And Kirby may have gone over some of these things 25 with you.	Page 10 1 point in time just for the record. So it's just the 2 five of us here. And you don't have any outside 3 influences where you are, do you, Mr. McMurray? 4 A My Golden Retriever is sleeping alongside 5 my desk. But besides that, no. 6 Q I have a Labrador puppy that insists on 7 getting on my left foot when she gets up underneath 8 me. So -- but okay. What have you done to prepare 9 for this deposition? 10 A I had a brief conversation with Kirby last 11 week. 12 Q Okay. Have you reviewed any documents? 13 A I have not. 14 Q Have you reviewed any deposition 15 transcripts? 16 A I glanced at one of them. 17 Q Which one was that? 18 A I think it was Mr. O'Hanlan's. 19 Q Any others? 20 A No. 21 Q Do you recall ever meeting Tom O'Hanlan or 22 anybody involved with Sealevel? 23 A I do not. 24 Q Did you ever come down to Greenville, 25 South Carolina as a part of the involvement that you
Page 9 1 But now that the deposition has started, 2 you're not supposed to talk with anybody about your 3 testimony during any breaks or anything. You're 4 aware of that, right? 5 A Yes. 6 Q Actually, I guess you could do it, but 7 then I could ask you questions about what you talked 8 about and then we would be here longer. And I've 9 never met anybody in a deposition that wanted that 10 to happen. So, I just encourage you not to do that. 11 To the extent I'm the person this can give you 12 advice, that's free advice. 13 And then I call that the Atlanta Braves 14 rule, because before Zoom depositions, we used to -- 15 the men would always go to the bathroom together on 16 a break. And I would have to tell people that all 17 we can talk about is the Braves. But we won't talk 18 about them since they didn't win the World Series. 19 But, in any event, let's get a roll call, 20 too. So we've got Jenny, you're by yourself; Kirby, 21 by yourself; and, Brian, you're by yourself today? 22 A Yes. 23 Q Mr. McMurray? Okay. And then I'm here 24 with Tom O'Hanlan. He's working on a biscuit over 25 there. But I'll have him show who he is at some	Page 11 1 or your companies had with CreatiVasc or the 2 Brookhaven entities? 3 A At the beginning we went to Atlanta. Yes. 4 We did go to Greenville. 5 Q And would that have been -- I have 6 information that there is, I think -- and so, of 7 course my job is just to ask the questions and your 8 job is to answer them. But sometimes if I think I 9 can help us out and if I'm fairly certain that I'm 10 right, which is not often. But there was a meeting 11 in maybe late 2015 down in Greenville? Do you 12 recall that? 13 A No. 14 Q Okay. What do you recall about any trip 15 that you individually took to Greenville, South 16 Carolina that had any relationship or relation to 17 CreatiVasc or the parties to this lawsuit? 18 A In what timeframe? 19 Q Well, my understanding was that you only 20 came to Greenville one time. Was that not what you 21 testified to a moment ago? 22 A When it was CreatiVasc. I mean, later on, 23 when DiaksaMed got involved -- I'm just trying to 24 understand your question -- you know, I went down to 25 Greenville, you know, more times once that took

1 place. 2 Q Got you. Thank you for that 3 clarification. I really appreciate that. It won't 4 be the first time that I think I know where we're 5 going but I'm wrong. 6 So, DiaxaMed got involved, I think, 7 according to the documents, around December 30th of 8 2016; is that right? 9 A That sounds correct. 10 Q Okay. And who is the -- who is or are the 11 owners of DiaxaMed? 12 A DXM Holdings. 13 Q Who is that? 14 A That's an LLC. That's a holding company. 15 Q Who are the owners of DXM Holdings? 16 A My family now owns DXM Holdings. 17 Q And when you say your family, who all does 18 that encompass? 19 A My wife and I. 20 Q Okay. Anybody else? 21 A No. 22 Q And when you say your family owns these 23 other companies, would that refer to your wife and 24 yourself as well? 25 A Yes.	Page 12 1 A I'm not -- I'm not sure which one of them 2 would be. It's somebody that doesn't work with us 3 anymore. But I'm not sure which one it was. 4 Q Do you recall the general timeframe? 5 A I do not. 6 Q Do you recall who the contact person was 7 at CreatiVasc? 8 A It was our technical guy. Names are not 9 my strong suit. I can picture him in my mind, but 10 right now I can't remember his name. 11 Q Would that be Frank Patterson? 12 A Yes. 13 Q Okay. Did you ever meet Frank Patterson 14 in person? 15 A Yes. 16 Q Okay. And you said it was at a trade 17 show. Do you have recollection of whether that was 18 in Las Vegas, Indianapolis, you know, Wisconsin, 19 Miami; wherever it was? 20 A I think it was in Boston, but I couldn't 21 be a hundred percent sure. 22 Q What was the -- do you recall the subject 23 matter of the trade show? I guess it was something 24 involving medical devices, wasn't it? 25 A It would have been. That's the trade
Page 13 1 Q Okay. 2 A Some of them are owned by me exclusively. 3 Some are more owned by us together. But nobody else 4 in our family is involved. 5 Q Do you have any children? 6 A We do. 7 Q Okay. What are their ages? 8 A 28, 26, 24, and soon to be 22. 9 Q Any of them live in South Carolina? 10 A No. 11 Q Any of them work for the company, for any 12 of your companies? 13 A No. 14 Q Okay. So, what was the first involvement 15 that you can recall that you or anyone as a part of 16 your group, your companies, had by way of 17 communications to become aware of the existence of 18 CreatiVasc or Brookhaven or this hemoaccess device? 19 A So, one of our business development 20 people, I believe, ran into one of the CreatiVasc 21 people at a trade show. And they requested 22 assistance for one of the components that they were 23 looking to use for the hemoaccess device. 24 Q And do you recall the names of those 25 persons?	Page 14 1 shows that people -- business development people 2 from ATEX go to. 3 Q Do you know offhand how many different 4 associations or groups put on those type of trade 5 shows within that industry that the ATEX people 6 would have been attending? 7 A Well, MD&M has kind of consolidated a lot 8 of them. But there is a lot of smaller ones. I 9 normally do not go to the trade shows. So I really 10 couldn't speak to that. 11 THE COURT REPORTER: Excuse me. I didn't 12 hear what you said. "Kind of consolidated a 13 lot of them." I didn't hear before. 14 THE WITNESS: MD&M is some sort of group 15 that's been consolidating trade shows. 16 THE COURT REPORTER: Thank you. 17 BY MR. FEW: 18 Q Is that a group within the medical device 19 industry, or is that a group within the trade show 20 industry? Or do you know? 21 A I think it's the trade show industry. But 22 I -- I don't know for sure. 23 Q How many business development people does 24 ATEX employ currently? 25 A Two.

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1 Q And are all of the companies that you're
2 affiliated with located in the North Carolina -- in
3 North Carolina?
4 A We have locations in other places. But,
5 yes, they're in North Carolina.
6 Q The operational headquarters is in North
7 Carolina?
8 A Yes.
9 Q Are there different operational
10 headquarters, or are they all kind of under one
11 roof?
12 A They're different.
13 Q They're different locations?
14 A Yes.
15 Q And what are the -- is the corporate
16 structure usually North Carolina, or is it like
17 Delaware, or do you know?
18 A We have different ones. We have different
19 ones.
20 Q So, how long has ATEX been in business?
21 A Started in '99, 2000 timeframe. So,
22 what's that? 20, 23 years?
23 Q Was it started by you?
24 A Yes.
25 Q Okay. And what's your background? Like,

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1 where did you get a -- I'm assuming you have one or
2 more college degrees based on the industry that
3 you're in and your -- what you've accomplished.
4 A I have a degree in textile technology from
5 NC State.
6 Q They won the Textile Bowl this year.
7 A We did. Doesn't happen very often. It's
8 the first time in my life that I've seen us beat
9 Clemson in the first one. So that was a big deal
10 for me. I'll tell you, when we went two years ago,
11 it was so dirty that the textile school up here had
12 to polish it up quite a bit. So, it's a nice Bowl.
13 Q Yeah. When I was in school at Clemson in
14 the mid to late 80's, I think Dick Sheridan who was
15 the Furman coach beat us, like, four years in row.
16 So, you may have been part of those celebrations.
17 A Coach Sheridan was a fine gentleman, yes.
18 A good coach.
19 Q Yeah. And then Mike O'Cain took over, I
20 believe, didn't he?
21 A Yeah. We had the doldrums for a long
22 time.
23 Q Yeah. He didn't do quite as well. What
24 year did you graduate from NC State?
25 A 1986.

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1 Q Okay. And then do you have any other
2 formal degrees?
3 A No.
4 Q Okay. And then in '86, what did you do?
5 I guess you started a career shortly after that?
6 A Yes.
7 Q And where did that start?
8 A General Motors in Warren, Michigan, at
9 their Technical Center.
10 Q How long did you work there?
11 A A little over a year.
12 Q And what did you do after that?
13 A I came back to run McMurray Fabrics. My
14 father passed away unexpectedly of a heart attack.
15 Q I'm sorry to hear that. And so, what was
16 the business of McMurray Fabrics at that time,
17 around, I guess, 1987, 1988?
18 A Yeah. We had 23 people. And we made
19 fabric for bras and fiberglass cast tape for broken
20 arms and legs.
21 Q And when you came back, did you have to
22 take the helm of the company?
23 A Yes.
24 Q Do you have any other siblings that were
25 involved in the business?

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1 A I do not.
2 Q Okay. And so, McMurray Fabrics is still
3 in existence. Approximately when was it founded or
4 did it begin operations?
5 A 1968.
6 Q And then you formed ATEX in, you said,
7 '99, 2000 time period?
8 A Correct.
9 Q And what was the business of ATEX at its
10 inception?
11 A The same thing that it is today in a
12 smaller form. We were making -- we found out at
13 McMurray Fabrics we were actually making some
14 fabrics for human-implantable applications, and
15 which we weren't comfortable doing.
16 And Konni and I had to make a decision if
17 we were going to continue to do that or not. And we
18 did. So we formed ATEX. So ATEX has always been in
19 the same business. Obviously, it's much more
20 diverse and complex now than it was in 2000. But
21 it's always been the same focus.
22 Q Is Konni your wife?
23 A Yes.
24 Q Is she involved in the operations of the
25 business?

Page 20 1 A No. 2 Q Okay. 3 A That's spelled K-O-N-N-I. 4 Q She appreciates that, for sure. Konni 5 probably still has the final say-so on a lot of 6 things other than just in the household, I'm sure. 7 You don't have to answer that. But -- so, ATEX at 8 some point in time, like you've testified, became 9 involved or made contact or was contacted by 10 CreatiVasc at the trade show that you thought was in 11 Boston, but you're not sure. And you're pretty sure 12 that was the first contact with CreatiVasc? 13 A Yes. 14 Q And it was CreatiVasc at that time, right? 15 It was not under a Brookhaven name or anything like 16 that? 17 A That's correct. 18 Q Okay. And -- 19 A To the best of my recollection, that's 20 correct. 21 Q And so, I'm not sure how big the -- or 22 what the chain of command is. But at some point in 23 time you then became aware of an opportunity to 24 become involved as, like, a collaborator on product 25 development with CreatiVasc. Is that what the	Page 22 1 sure I understood your question. 2 Q I'll be glad to. I'll be glad to. That 3 was fairly convoluted. Let me do it another way. 4 At some point in time there was an agreement, an 5 initial agreement, between ATEX and CreatiVasc; is 6 that right? 7 A When you say "agreement," there was a 8 supply agreement that had -- 9 Q Right. And I think -- I'm pretty sure 10 I've got that in the exhibits; but, unfortunately -- 11 COURT REPORTER: He froze there for a 12 second. I don't know if he said anything. 13 THE WITNESS: I said there was a supply 14 agreement. That's all I said. 15 COURT REPORTER: Okay. Thank you. 16 BY MR. FEW: 17 Q And do you recall the date on that? 18 A I do not. 19 Q I'll figure that out. And who was the 20 first person that you can recall dealing with at 21 CreatiVasc? 22 A We dealt with Frank Patterson. I may not 23 have dealt with him. I met Frank. But my people 24 would have -- you know, he was the main contact. 25 Q When DiaxaMed took over on basically
Page 21 1 initial focus was? 2 A To collaborate on a component of their 3 device. That's correct. 4 Q And which component was that? 5 A It was the actual valve assembly. 6 Q And what would that be made up of? 7 A Well, it went through, you know, different 8 iterations. But kind of the iteration that was 9 landed upon was a balloon inside of the valve 10 assembly. The initial iteration, they were actually 11 collapsing the shunt down, and they found out that 12 it wouldn't open back up. But they tried some 13 things to get it to open up, but it didn't work. So 14 they changed direction. 15 Q So, what was the first -- were you 16 involved in the decision for ATEX to get involved in 17 that collaborative process -- 18 A Yes. 19 Q -- to address the valve assembly? 20 A Yes. 21 Q Okay. And what do you recall that you did 22 prior to there being some documentation of what the 23 plan was going to be between CreatiVasc and ATEX 24 going forward initially? 25 A Would you repeat that, please? I'm not	Page 23 1 December 30th of 2016, did Frank Patterson stay on? 2 A Not -- if he did, it wasn't for a long 3 period of time. I -- I don't recall. 4 Q At some point in time you met Steve 5 Johnson, right? 6 A Yes. 7 Q And he was more of the business contact 8 for CreatiVasc. Is that a fair statement? 9 A Yeah. I would say that characterizes it 10 pretty well. 11 Q Did you ever meet him in person? 12 A Yes. 13 Q Would that have been in Greenville or 14 somewhere in North Carolina or Atlanta, or do you 15 recall? 16 A Well, he -- I know he came to visit us at 17 ATEX. And again, it depends on what timeframe 18 you're talking about. When DiaxaMed got involved, I 19 obviously met him in Greenville. And I also would 20 have met him in Atlanta. 21 Q Okay. And did he -- the relationship 22 between DiaxaMed and Johnson was terminated, I 23 believe, around March the 30th of 2017. Does that 24 sound right? 25 A Yes.

Page 24 1 Q And you were involved in the decision to 2 terminate him; is that right? 3 A Yes. 4 Q And so what -- who all remained in terms 5 of personnel at DiaxaMed beginning, say, on April 6 the 1st of 2017? 7 A Well, Lindsay was there. I'm trying to 8 remember. There was a young guy. Like, names are 9 not my strong suit. Brought in a gentleman named 10 Bob. 11 Q Bob Scribner? 12 A Yes. Bob Scribner. And then there was a 13 couple of other junior engineers that were there. 14 Q And they -- did the oper -- is Chad Clark? 15 Was that the young man's name? 16 A Chad Clark. Yes. Thank you. 17 Q Is he a Clemson person? 18 A Yes. 19 Q And then I'm seeing an Anella Holdaway. 20 Did she work for the company? 21 A Maybe for a short period of time. That 22 one doesn't ring a bell. 23 Q Okay. And then there is a Victor Kasler? 24 A Yeah. Like I said, there was a couple of 25 junior engineers. I wouldn't know their names.	Page 25 1 A I'd say a year, year-and-a-half. 2 Q Where was she located? 3 A She worked -- she lived remotely. I don't 4 remember where she lived, but she did live remote. 5 She came in the office some, but she did a lot of 6 her work remote. 7 Q And then I'm seeing a Savannah Forester? 8 A Yes. 9 Q Approximately what role did she play? 10 A She was an engineer, worked with Chad, 11 worked on a number of different things. She was 12 there for a couple of years. 13 Q And the operations, there was an office in 14 Greenville that DiaxaMed had; is that right? 15 A That's correct. 16 Q Was it over at that Patewood complex where 17 CreatiVasc had previously been located? 18 A That's correct. 19 Q And so DiaxaMed assumed any lease that 20 CreatiVasc would have had over there initially? 21 A I think -- I don't know if they assumed it 22 or wrote a new lease. I know that DiaxaMed needed 23 more space than CreatiVasc had originally. 24 Q Did DiaxaMed still have a presence in 25 Greenville, South Carolina?
Page 26 1 Q Okay. Mitchell Grant. Does that name 2 ring a bell? 3 A No. 4 Q Becky Lynn Dorsey? 5 A Yes. 6 Q Do you know how long she would have worked 7 there? 8 A I do not. 9 Q Kayla Wilson? 10 A Yes. 11 Q What did she do? 12 A She was one of the more senior engineers 13 that worked with Chad. She was there probably for a 14 couple of years. 15 Q Was she hired initially by DiaxaMed and -- 16 or do you recall? I'm just trying to figure out if 17 she was part of the CreatiVasc team when you all -- 18 A I think she was hired by DiaxaMed. 19 Q Okay. And then Chris Nowicki? 20 A Yes. 21 Q Do you recall what she did? 22 A Yes. She was the quality assistance 23 manager. 24 Q And how long was she employed? Do you 25 know?	Page 27 1 A It still had an office, yes. 2 Q Are there any employees there? 3 A Not on a regular basis. There's a few 4 people that, you know, may pop in from time to time. 5 Q What are their names? 6 A Bob Thatcher. 7 Q And what does Bob do? 8 A Bob is a CEO of DiaxaMed. 9 Q And how long has he been with DiaxaMed? 10 A A couple of years; two, two-and-a-half 11 years. 12 Q And what age is Bob, if you know? 13 A I'd say he's in his mid sixties. 14 Q And do you know where he worked prior to 15 becoming the CEO of DiaxaMed? 16 A Yeah. He was the CEO of a company called 17 4C Medical. 18 Q 4C? 19 A Yes. 20 Q Like the number 4, the letter? 21 A Correct. 22 Q And what did that company do? 23 A They're developing a transcatheter heart 24 valve. 25 MR. FEW: Where is that coming from?

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Page 28 1 THE WITNESS: Not me. 2 THE COURT REPORTER: Not me. 3 MR. SHEALY: What you hearing, Wes? 4 MR. FEW: I just heard some women, like, 5 talking at the coffee maker sort of thing. Did 6 you all hear that? 7 THE COURT REPORTER: Yes. 8 THE WITNESS: Yeah. 9 MR. SHEALY: It may be Lindy next door. 10 MR. FEW: Okay. Well, it's gone away. 11 BY MR. FEW: 12 Q Who else works for DiaxaMed now? 13 A A gentleman named Ronald Burke. 14 Q Ronald? 15 A Burke. 16 Q And what does he do? 17 A He is the technical coordinator, I would 18 say, of things. 19 Q Okay. How long has he been working for 20 the company? 21 A A year-and-a-half maybe. Two years, a 22 year-and-a-half, something like that. 23 Q And what kind of background does he have? 24 A He is a med -- he's had a varied career in 25 medical device.	Page 30 1 Q So, is it accurate to say that the 2 businesses that you're involved in are somehow 3 exempted from having to get those types of 4 approvals? 5 A No. 6 Q Then would it -- is it that you all 7 make -- your companies make components that are part 8 of other medical devices? Is that what it is? 9 A That is correct. 10 Q Okay. So -- 11 A I mean, at DiaxaMed, the goal will be at 12 some point in time to get a 510(k) approval on some 13 of the things they're working on, but that hasn't 14 happened yet. 15 Q How many projects is DiaxaMed working on 16 right now? 17 A Two. 18 Q And what are those? 19 A The hemoaccess valve and a synthetically 20 sealed surgical graft. 21 Q The synthetically sealed surgical graft, 22 is that closely related or related at all to the 23 hemoaccess valve? 24 A Not at all. 25 Q When did DiaxaMed begin working on the
Page 29 1 Q Is it accurate to say that all medical 2 devices before they can ever get commercialized have 3 to go through, like, the 510(k) process? 4 A Well, it depends what it is. I mean, 5 there's a 510(k) process and there's a PMA process. 6 So the PMA process is more stringent than the 510(k) 7 process. But, yes, they have to -- in the U.S. they 8 have to go through a process to get approved. 9 Q Are both of those under the umbrella of 10 the FDA? 11 A They are. 12 Q Does ATEX have any products that have been 13 approved under the PMA process? 14 A No. 15 Q Does DiaxaMed have any products that are 16 approved under the PMA process? 17 A No. 18 Q Do any of your companies have any products 19 that are approved under that PMA process? 20 A No. 21 Q What about for the 510(k)? Does ATEX have 22 any 510(k) products? 23 A No. 24 Q Does DiaxaMed have any 510(k) products? 25 A No.	Page 31 1 synthetically sealed surgical graft? 2 A Probably early 2019. 3 Q And then when did DiaxaMed begin working 4 on the hemoaccess device? 5 A It would have been the January after the 6 transaction. And, you know ... 7 Q Because DiaxaMed was formed for the 8 purpose of acquiring the assets of CreatiVasc and/or 9 Brookhaven; is that right? 10 A Yes. 11 Q And so the effort to develop the 12 hemoaccess device is continuing? 13 A Yes. 14 Q Okay. And has DiaxaMed generated any 15 revenue from sales? 16 A No. 17 Q Has DiaxaMed generated any revenue from 18 any source since its inception? 19 A No. 20 Q So DiaxaMed has been funded from capital 21 contributions from who all? 22 A From DXM Holdings. 23 Q And approximately how much money has DXM 24 Holdings put into DiaxaMed to date? 25 A I don't know that number off the top of my

1 head. 2 Q That would be something that would be in 3 the books and records of DiaxaMed though, right? 4 A Yes. 5 Q And then that would be the only -- all the 6 contributions have come from you and/or your wife by 7 way of DXM Holdings. Is that a fair statement? 8 A Yes. 9 Q And has there been any discussions of 10 discontinuing the effort to develop the hemoaccess 11 device? 12 A Not specifically. We're pursuing the path 13 to, you know, prove out, you know, will the actual 14 therapy work or not. And, you know, we've continued 15 to go down that path. So we want to obtain that 16 answer if it's at all possible. 17 Q So, what -- I want to ask you about what 18 you know about the product, the hemoaccess product 19 that is being developed currently. Are you involved 20 in that? 21 A Yes. 22 Q Okay. And DiaxaMed has taken over 23 ownership of all of the intellectual property of 24 CreatiVasc, correct? 25 A That's correct.	Page 32 1 (On the record.) 2 --- 3 THE WITNESS: Okay. So, generically -- 4 and thank you, Kirby, for that, because it is a 5 sensitive area. But, generically, the device 6 consists of a valve assembly, a cannulation 7 chamber, and a subcutaneous port. 8 BY MR. FEW: 9 Q So, generically, how is the device that's 10 being developed now differentiated or different at 11 all from what CreatiVasc was doing, 12 CreatiVasc/Brookhaven, up through the end of 2016? 13 A Well, the valve assemblies are -- you 14 know, have been completely re-engineered. And we 15 have a different cannulation chamber. But, you 16 know, we're still using a needle and a subcutaneous 17 port to activate the balloons. 18 Q A needle and a subcutaneous port? So, are 19 you familiar with the work that Sealevel had done as 20 a part of its Customer Supply Agreement with 21 CreatiVasc? 22 A Only a cursory knowledge. 23 Q Are you aware of whether or not DiaxaMed 24 is currently using any of the technology that was 25 developed by Sealevel?
Page 33 1 Q And so, what are the components of the 2 hemoaccess device as it's being developed currently 3 by DiaxaMed? 4 MR. SHEALY: Wes, I'm going to object to 5 the extent that that question calls upon the 6 witness to reveal current trade secrets of the 7 company and instruct him not to answer to the 8 extent that there might be trade secrets that 9 could be revealed. 10 Also, before I forget about it, we will 11 want to mark the entire deposition as 12 confidential under our Confidentiality Order. 13 MR. FEW: Very well. Is there no way that 14 the witness can answer that question in general 15 terms without revealing trade secrets? 16 MR. SHEALY: Well, Mr. McMurray is in a 17 better position to that than I. But that's my 18 instruction to Mr. McMurray. 19 THE WITNESS: Sorry about the noise. 20 We're getting our other dog back with her new 21 ACL. I'm going to shut the door. I'll be 22 right back. 23 --- 24 (Off the record.) 25 ---	Page 35 1 A DiaxaMed is not using any of that. 2 Q Had DiaxaMed ever used any of that 3 technology since its inception? 4 A No. 5 Q So DiaxaMed has been using the -- what's 6 the difference between what DiaxaMed is doing now 7 versus what CreatiVasc/Brookhaven was doing as it 8 related to Sealevel's development or contributions 9 to the product? 10 A My cursory understanding was they were 11 working on some sort of pump and some way to connect 12 the pump to be able to pump it up and pump it down. 13 And, like I said, our focus has been on using a 14 subcutaneous port, using a needle to fill and empty 15 the port. 16 Q That would be the original thing that Dr. 17 Cole was working on? 18 A They -- they evolved to a port. That is 19 correct. I mean, I think they tried some other 20 things. But, yes. 21 Q So initially ATEX had A Customer Supply 22 Agreement with CreatiVasc; is that right? 23 A Yes. 24 Q And at some point in time you and/or 25 others started making some -- contributing some

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1 capital towards the effort. Is that a fair
2 statement?

3 A Well, Brookhaven bought CreatiVasc. And
4 during that, yes, we actually invested some money in
5 Brookhaven which they deployed into CreatiVasc.

6 Q Okay. Who were the persons that were
7 involved in the decision making and the transaction
8 whereby folks from your side of the equation
9 contributed capital to Brookhaven? Is that what
10 you're saying?

11 A I believe that's one of the structures.

12 Q What do you remember about that?

13 A And so Brookhaven was buying CreatiVasc.
14 And they bought a company called FMI. I think it
15 stood for Future Matrix Interventions, maybe, out in
16 Texas; and combined those two companies together as
17 Brookhaven as the holding company. And when that
18 all got put together, we invested some capital with
19 Brookhaven.

20 Q Were you the primary decision maker on
21 pulling the trigger to put that capital into that
22 investment?

23 A Yes.

24 Q Who else was involved in that decision?

25 A Obviously our advisers, our attorneys, you
1 know, my technical people. I asked them some
2 questions, you know; discussed it with Konni.

3 Q Do you recall the amount of the initial
4 capital contribution that was made when it was
5 still -- the first time, when it was Brookhaven?

6 A I do not.

7 Q Do you recall the time period?

8 A Not specifically. Maybe 2015.

9 Q When you say you had attorneys, I think
10 I've seen the name of -- is it Hutchinson?

11 A Yes.

12 Q And he is -- that's a man?

13 A Fred Hutchinson [ph], yes.

14 Q And how does he spell that last name?

15 A H-U-T-C-H-I-N-S-O-N [sic].

16 Q Oh, Hutchinson. Okay. And he has been
17 legal counsel to ATEX and McMurray Fabrics for how
18 long?

19 A Over 30 years.

20 Q Has he or his firm been the ones that have
21 handled all of the transactions and capital
22 investments that have been made?

23 A The vast majority of them, yes.

24 Q And did they do some due diligence prior
25 to the investment that was made into Brookhaven?

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1 A They did what they would normally do when
2 looking at making an investment.

3 Q And what's your understanding of what that
4 would be?

5 A One, we check to make sure that, you know,
6 the company was sound and didn't have, you know, any
7 legal problems, you know, check on, you know, other
8 things that are out there in the -- you know, in the
9 public domain.

10 Q Wouldn't they also want to review all of
11 the contracts and obligations of the entity that
12 they were investing in?

13 A Not necessarily.

14 Q So you wouldn't have had a concern over
15 other Customer Supply Agreements that CreatiVasc had
16 entered into?

17 A We were investing in Brookhaven.

18 Q What was the difference between Brookhaven
19 and CreatiVasc?

20 A Well, Brookhaven was a separate company
21 and it owned CreatiVasc which was a separate
22 company.

23 Q Excuse me. But ultimately DiaxaMed took
24 over everything that was once CreatiVasc, did it
25 not?

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1 MR. SHEALY: Object to the form. You can
2 answer.

3 A Took over whatever was outlined in the
4 agreement of what we were taking over.

5 Q Is there anything in the agreement that
6 shows that anything was left on the side of the
7 road, so to speak?

8 MR. SHEALY: Object to the form. Can you
9 answer?

10 A I think the agreement should speak for
11 itself.

12 Q So, were you aware, or is it your belief
13 that whatever it is that DiaxaMed became the owner
14 of on December 30th of 2016, did it have any
15 existing contractual obligation to Sealevel?

16 MR. SHEALY: Object to the form. You may
17 answer.

18 A I'm sorry. Could you repeat that?

19 Q So, your attorneys did the due
20 diligence -- let me go back and make sure I have a
21 better understanding of the timeline. So, your
22 attorneys did some due diligence prior to the
23 initial investment that was made in, roughly, 2015;
24 is that right?

25 A That's my estimate.

Page 40 1 Q Okay. And then what involvement in the 2 management of the effort -- at that time the only 3 thing that was going on was an effort to develop 4 this hemoaccess device. Is that accurate? 5 A At Brookhaven? 6 Q Yes. 7 A No. Brookhaven was running a 30-plus 8 million-dollar company called FMI in Texas also. 9 Q Okay. And your -- ATEX's investment 10 included part of that as well? 11 A ATEX did not invest. One of our LLCs 12 invested. 13 Q And what was the name of that LLC? 14 A I think it was Saturn. 15 Q Saturn invested in -- Saturn made the 16 initial investment in Brookhaven? 17 A Yes. 18 Q And who did you communicate with at 19 Brookhaven in order to become aware of the 20 opportunity to make that investment? 21 A John Feltman. 22 Q How did you come to know him? 23 A I think Steve Johnson introduced him to 24 me. 25 Q Do you recall, was that in person?	Page 42 1 THE WITNESS; I'm back on the record. 2 BY MR. FEW: 3 Q We can take a break at any point in time, 4 too. That's part of my introductory background 5 session. 6 Let me try to get us affiliated with an 7 exhibit here. Can you see this document here? 8 A Yes. 9 Q This is February 18 of 2015, a document 10 between an agreement between ATEX Technologies, Inc. 11 and CreatiVasc Medical, Inc. Do you see that? 12 A Yes. 13 Q Is this the Supply Agreement that you were 14 referring to? 15 A It looks like it, yes. 16 Q This was Exhibit 5 to some Requests for 17 Admissions that have been admitted as authentic by 18 your counsel. At this point in time, had ATEX -- 19 had you or anybody on your side of the equation made 20 a capital contribution to the effort? 21 A I honestly don't remember the timing of 22 that specifically. 23 Q But is it your recollection that the 24 Supply Agreement was put into place first and ATEX 25 began working on the collaboration and then later
Page 41 1 A I think initially it was over the phone. 2 Q But did you have meetings in person prior 3 to making that first capital contribution? 4 A Yes. 5 Q And what do you recall that you learned 6 about what you were going to being asked to invest 7 in? 8 A We put a lot of our focus on FMI and 9 understanding that business and what they did and, 10 you know, what the, you know, potential for it was 11 since it was a, you know, significant cash flow 12 positive, revenue-generating entity. 13 Q And I'm sorry. Do you have any of -- do 14 any of your companies have any affiliation with FMI 15 at present? 16 A We do not. 17 Q What happened to FMI? 18 A Brookhaven sold FMI. Excuse me for a 19 second. I'm going to let my dog back in. 20 Q Sure. 21 - - - 22 (Off the record.) 23 - - - 24 (On the record.) 25 - - -	Page 43 1 made the investment in Brookhaven? 2 A I don't want to misspeak. I don't 3 remember those dates. So I would not want to give 4 you an incorrect answer. 5 MR. FEW: Okay. This document was 6 marked -- the one that we just looked at is 7 Bates labeled 216, Defendants 216 to 221 for 8 the record. We'll make that Exhibit 1. I'll 9 break that out and send it to the production at 10 EveryWord and to you, Kirby, afterwards, just 11 for clarity. And that was Exhibit 5 to the 12 Requests for Admissions. 13 - - - 14 (Plaintiff's Exhibit Number 1, Unit 15 Purchase Agreement, marked for 16 identification.) 17 - - - 18 BY MR. FEW: 19 Q Bear with me while I kind of work to put 20 together this timeline, these documents. All right. 21 This is a Class B Unit Purchase Agreement. Are you 22 familiar with this document? And I can scroll 23 through it. One of the -- it's got your signature 24 down below? 25 A Mm-hmm.

Page 44 1 Q And then it looks like it was signed by 2 Feltman as the Seller. What was going on at this 3 point in time in -- or what is your understanding or 4 recollection of what this document was effectuating? 5 A Can you scroll through slowly so I can 6 read it? 7 Q Yeah. Absolutely. So this is -- it 8 says -- just tell me when you want me to scroll 9 down. I'm looking at the Class B Unit Purchase 10 Agreement down through 1, 2, 3, 4, 5 WHEREAS 11 clauses. If you want me to keep streaming, just let 12 me know. 13 Let me go back up and ask a question. So, 14 DXM is the Purchaser. Brookhaven Vascular is the 15 Seller. It says that Brookhaven Medical is the 16 Parent Company, and DiaxaMed is the Company. Would 17 this be a document whereby DiaxaMed took -- or DXM 18 Holdings became the owner of all of the outstanding 19 stock or otherwise ownership interest in DiaxaMed? 20 A Yes. That's what it looks like. So, 21 originally Brookhaven and DXM owned DiaxaMed. And 22 at some point in time later they sold the balance of 23 it to DXM. And this looks like that's the document 24 that addressed that transaction. 25 MR. FEW: All right. And this document is	Page 45 1 Q Let me scroll down and just get you to 2 confirm the signatures, and then we might come back 3 to this. Steve Johnson signed on behalf of 4 Brookhaven Vascular. Do you see that? 5 A No. 6 Q And John Feltman signed on behalf of 7 Brookhaven Medical. Do you see that? 8 A Yes. 9 Q And Steve Johnson is identified as the 10 President and CEO of Brookhaven Vascular. Do you 11 see that? 12 A Yes. 13 Q What was the difference between Brookhaven 14 Vascular and CreatiVasc? 15 A I think that they renamed it Brookhaven 16 Vascular when Brookhaven took over -- I don't 17 know -- from a corporate structure standpoint. But 18 I think the business that's being referred to is 19 CreatiVasc. 20 Q And then you've signed on behalf of DXM? 21 A Correct. 22 Q And DiaxaMed, it looks like? So DXM 23 Holdings is the manager of DiaxaMed, and you signed 24 on behalf of DXM Holdings for DiaxaMed. Is that the 25 correct way to describe it?
Page 46 1 marked as Defendants 111 to 116, 117. And 2 we'll mark that as Exhibit 2 of the deposition. 3 It's Exhibit 12 to the Requests for Admissions 4 that were served on August 21st of this year. 5 --- 6 (Plaintiff's Exhibit Number 2, Bates 7 Numbers Defendants 111 to 117, marked for 8 identification.) 9 --- 10 BY MR. FEW: 11 Q Next I want to show you this document that 12 was Exhibit 11 to some Requests for Admission called 13 a Contribution Agreement dated December 30th of 14 2016. Can you see that on the screen, Mr. McMurray? 15 A Yes. 16 Q And this is the one that's dated 17 December 30th of 2016. Brookhaven Vascular is 18 identified as the Contributor. Brookhaven Medical 19 is the Parent, and then DiaxaMed is the Company. 20 What was this document intending to effectuate? 21 A I believe that this was the formation of 22 DiaxaMed in putting the assets that Brookhaven had 23 in there. I'd have to take a minute to really read 24 it; but on the surface of it, that's what it looks 25 like.	Page 47 1 A That's what it looks like, yes. 2 Q And your attorney, Hutchison, apparently 3 does not have the two Ns in his name, according to 4 what I'm looking at. So -- 5 A Did I give you two Ns? I'm sorry. 6 Q That's all right. It's quite all right. 7 It's not a spelling bee? 8 A It's the H-I. I thought that was the part 9 you'd missed. It must have been the Zoom. 10 Q Yeah. No worries. So his firm was 11 involved in all these transactions, right? 12 A Yes. 13 Q And, presumably, they would have been 14 provided access to all of the records of CreatiVasc? 15 A This was -- I mean, this document was when 16 Brookhaven was putting -- I guess, contributing 17 their stuff -- not a great term -- you know, into 18 DiaxaMed. There should be a list of what was 19 contributed. 20 Q Okay. There is everything that I'm 21 looking at, contributed assets. And this is a list 22 of patent applications and patents; is that right? 23 A That's what it looks like. 24 Q All right. And then there's some 25 registered trademarks. Do you see that?

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1 A Yes. 2 Q Any indication of -- do you recall what 3 would have happened to any contracts that CreatiVasc 4 or Brookhaven Vascular had at the time? 5 A Well, the contract with ATEX was on that 6 list. 7 Q Where is that? 8 A I think it's at the top. There. Assigned 9 contracts. 10 Q And that's the contract that ATEX had with 11 CreatiVasc that we went over that was Exhibit 1, 12 right? 13 A That's correct. 14 MR. FEW: Okay. Jenny, I think we have 15 three exhibits. This would be the third which 16 was Exhibit 11 to the Request for Admissions. 17 And it is Defendants -- it ends with Defendants 18 110 and starts with Defendants 98. So, 98 to 19 110 would be Exhibit 3. 20 --- 21 (Plaintiff's Exhibit Number 3, 22 Contribution Agreement, marked for 23 identification.) 24 --- 25 BY MR. FEW:	1 identification.) 2 --- 3 BY MR. FEW: 4 Q Mr. McMurray, you're aware that your 5 counsel in this lawsuit has admitted that this is an 6 authentic document. Were you aware of that? 7 A I was not. 8 Q Do you have any dispute as to whether or 9 not this is an executed copy? Do you see the 10 signatures of Steve Johnson here? 11 A I said I have no knowledge of this 12 document. 13 Q Okay. But your testimony was that you 14 weren't aware of an executed version of this 15 document, as I recall you said. Right? 16 A That's correct. 17 Q Okay. So, if Steve Johnson testifies that 18 he executed this document on behalf of CreatiVasc as 19 its Chief Executive Officer in October of 2014, you 20 don't have any reason to dispute that, do you? 21 A I have no knowledge of that. 22 Q When did you first become -- you testified 23 a minute ago that you didn't want the technology 24 that Sealevel had been working on. When did that 25 decision-making process first arise?
1 Q I'm now going to show you what was Exhibit 2 8 to the Requests for Admissions and ask you if 3 you've ever seen this document before? 4 A I have not. 5 Q This is the Customer Supply Agreement 6 between my client, Sealevel, and CreatiVasc that was 7 entered into on October 28th of 2014. Have you ever 8 been made aware of the existence of this document at 9 any point in time prior to today? 10 A Not an executed copy, no. 11 Q What do you mean by that distinction, "not 12 an executed copy?" 13 A I had heard at one time that there had 14 been some discussions about a Supply Agreement. 15 It's something we had no interest in. So I have no 16 working knowledge of this agreement or the 17 technology, for that matter. 18 Q When did you first become aware -- just 19 following up on your testimony from a minute ago -- 20 and, Jenny, this will be Exhibit 4 to the depo. And 21 that is Defendants -- it ends with Defendants -- not 22 64 but Defendants 69. 55 to 69. 23 --- 24 (Plaintiff's Exhibit Number 4, 25 Customer Supply Agreement, marked for	1 A So, the core therapy to treat a patient is 2 to be able to turn the blood flow on and to turn the 3 blood flow off and have that functionality be able 4 to be executed at least three times a week without 5 creating thrombosis, without creating damage to the 6 person's vasculature and everything. That is the 7 therapy. 8 And the way that the balloons get 9 activated is, you know, not a key part of the 10 therapy. You know, our assessment was people are 11 getting large needles put in their arms for 12 dialysis. The dialysis techs are very familiar with 13 using needles; and having another needle in the mix 14 to inflate and deflate a port in somebody's body, 15 you know, was something that would fit into their 16 workflow. And that's what we've always pursued. 17 --- 18 (Zoom cut off.) 19 --- 20 (On the record.) 21 --- 22 BY MR. FEW: 23 Q Back on the record. So, Mr. McMurray, 24 from your testimony I'm taking it that there was a 25 consideration given to the inventive contribution

Page 52 1 that was made by my client, Sealevel, but you 2 decided not to take any ownership interest in that. 3 And that decision is shown in the Contribution 4 Agreement on page 9 whereby the only assigned 5 contract was between -- it says it was between the 6 Contributor and ATEX Technologies. But the 7 Contributor under that agreement is Brook -- is -- 8 bear with me. The Contributor is Brookhaven 9 Vascular. 10 And if you need me to go back to 11 exhibit -- I'll be glad to do that. Let me do that. 12 I apologize. I've yet to figure out any more 13 efficient way to navigate documents in a Zoom 14 deposition. 15 Okay. This is the Contribution Agreement 16 dated December 30th of 2016. It begins with 17 Defendants 000098. Can you see that document? 18 A Yes. 19 Q Okay. So, CreatiVasc is not listed as a 20 party to this agreement, is it? 21 A That's correct. I mean, I believe that 22 Brookhaven Vascular -- CreatiVasc in some manner, 23 shape or form became Brookhaven Vascular. But I 24 don't know that for a fact. But at this point in 25 time Brookhaven Vascular was the entity that had the	Page 54 1 it. 2 Q So DiaxaMed identified certain contracts 3 of Brookhaven Vascular as the successor to 4 CreatiVasc that it was going to not assume; is that 5 correct? 6 A I didn't say that. I told you before I'd 7 never seen this document before. 8 Q Well, then how do you think in your due 9 diligence, if your attorneys and their people went 10 and looked at all the books and records of 11 CreatiVasc and Brookhaven Vascular, did they not 12 become aware of the existence of this document, of 13 this Customer Supply Agreement with Sealevel? 14 MR. SHEALY: Object to the form. You may 15 answer. 16 A I don't have an answer for that question. 17 Q In the formal -- how many acquisitions 18 similar to what happened here have you been involved 19 in in the past 20 years? 20 A None. 21 Q So, is the investment that was made in 22 Brookhaven Vascular the only time that ATEX and/or 23 McMurray Fabrics have sort of branched out to do 24 something differently? 25 A Well, McMurray Fabrics, we bought another
Page 53 1 patents. 2 Q And did your company get notice of the -- 3 or were you all aware that CreatiVasc had been -- 4 ownership had been transferred to Brookhaven 5 Vascular? 6 A We didn't -- we knew that the process was 7 taking place. We didn't know it -- we weren't 8 intimately familiar. But, yes. 9 Q And do you know that obviously occurred 10 sometime prior to December 30th of 2016, right? 11 A It would look like that, yes. 12 Q And so the Customer Supply Agreement that 13 we were looking at a minute ago that my client had, 14 this was Exhibit 4 to the deposition, it's October 15 20th of 2014. It actually predates the Supply 16 Agreement that ATEX had with CreatiVasc, right? 17 A 2014 is before 2015. 18 Q See. You probably thought we weren't 19 going to accomplish anything today. But we can all 20 agree on that. 21 This document, do you have any reason to 22 believe that this contract was not assumed by Creati 23 -- Brookhaven Vascular? 24 A I have no idea what happened to Brookhaven 25 Vascular, but I know that DiaxaMed did not assume	Page 55 1 company. Well, we bought the assets of a company. 2 But it was a much different situation than what 3 we're talking about here. With the merging 4 technology, it was a manufacturing company that 5 didn't have any intellectual property. 6 Q When did that transaction occur, roughly? 7 A 2000. 8 Q Okay. And has ATEX made similar 9 acquisitions of related companies during this? 10 A Well, first of all, ATEX hasn't made any 11 acquisitions. Okay. This acquisition was through 12 DXM Holdings. 13 Q And this is a corporate structure that 14 your attorneys, Mr. Hutchison, helps advise you on 15 how you to do, right? 16 A That's correct. Remember, DiaxaMed was 17 jointly owned by DXM Holdings and Brookhaven for a 18 period of time. 19 Q Up until 2018, right? 20 A That's what we looked at. 21 Q I mean, that's what that agreement that 22 we've looked at showed, right? 23 A That's right. 24 Q Okay. And is that -- what happened in 25 2018? Did your side of the equation contribute more

Page 56 1 capital, or did they -- how did it come to be the 2 sole owner? 3 A Whatever is documented in that document is 4 what the transaction was. Brookhaven was having 5 some challenges, I think, at FMI and all. And they 6 made the decision they didn't want to continue to 7 have the responsibility to fund their portion of 8 funds that DiaxaMed would need. 9 Q I'm going to take you to another document. 10 We're up to Exhibit 4; is that right? 11 THE COURT REPORTER: We would mark 5 next. 12 Q Okay. This is an Exhibit 3 to the 13 Requests for Admissions that were admitted. It's 14 entitled an Asset Protection Agreement. 15 - - - 16 (Plaintiff's Exhibit Number 5, Asset 17 Protection Agreement, marked for 18 identification.) 19 - - - 20 BY MR. FEW: 21 Q Are you familiar with this document? 22 MR. SHEALY: It's not up yet, Wes. 23 MR. FEW: Oh. I'm sorry. Is it not? 24 MR. SHEALY: No. 25 MR. FEW: How about now?	Page 58 1 complete list of inventions or improvements that 2 have been made or conceived or first reduced to 3 practice by me alone, or jointly with others, prior 4 to my employment with the company? 5 A That's correct. That says he's involved 6 in the creation of a patent. 7 Q Okay. 2.1 is called Proprietary Rights. 8 Do you see that? 9 A Yes. 10 Q And I may be misreading this. It's a 11 distinct possibility. But it says: To preclude any 12 possibility of uncertainty, I have identified on the 13 attached Exhibit A (Prior Inventions,) a complete 14 list of all in inventions that I have alone, or 15 jointly with others, conceived or reduce to practice 16 or caused or conceived, developed or reduced to 17 practice prior to commencement of my employment with 18 the company, that I consider to be my property or 19 the property of third parties that I wish to have 20 excluded from the scope of this agreement. 21 Is that -- it seems to me that he 22 identified that patent application as something that 23 was not included in this agreement? 24 MR. SHEALY: Object to the form. You may 25 answer.
Page 57 1 MR. SHEALY: Now we can see it. 2 THE WITNESS: Yes. 3 BY MR. FEW: 4 Q And what do you recall was the purpose of 5 this document? 6 A This is an Asset Protection Agreement that 7 somebody would sign when they are hired by DiaxaMed. 8 Q And this was signed by yourself on that 9 page; is that right? 10 A Yes. 11 Q January 19th of 2017? 12 A Yes. 13 Q And then Mr. Johnson signs it on January 14 the 6th of 2017; is that right? 15 A That's correct. 16 Q And then he identifies the Hemoaccess 17 Valve System Magnetic Activation as being something 18 that he owns that is not being contributed to the 19 ongoing concern of DiaxaMed. Is that a fair 20 statement? 21 MR. SHEALY: Object to the form. You may 22 answer. 23 A I don't think that's what it says. 24 Q This is Exhibit A, right? It says: 25 Except as listed in Section 2, the following is a	Page 59 1 A He said he wanted it excluded from it. 2 Q Do you have any idea why he would have 3 done that? 4 MR. SHEALY: Object to the form. You may 5 answer. 6 A I don't. Lots of people, you know, have 7 lots of patents. And, you know, he was -- that's 8 their right to disclose that they have been involved 9 in any patents in the past. So ... 10 Q And that's a document that was -- I mean, 11 that's a form document that was provided to him by 12 your counsel, the counsel to DiaxaMed, right? 13 A It would have come from our HR. But, yes. 14 That's correct. It's a form document. 15 Q And then he describes it as the Hemoaccess 16 Valve System Magnetic Activation (U.S. and Foreign 17 Patent Applications). Right? That's what it says? 18 A That's what it says. 19 Q Now, the contributed assets in the 20 Contribution Agreement that was signed by you and 21 Steve Johnson from December 30th does include 22 several patent applications for a Magnetically 23 Activated Arteriovenous Access Valve System and 24 related methods. Were you aware of that? 25 A Yes.

Page 60 1 Q So, did DiaxaMed not take ownership of the 2 inventive contributions that Steve Johnson had made 3 toward that? 4 MR. SHEALY: Object to the form. You may 5 answer. 6 A I think it's a different thing of what 7 you're saying. Those patents had already been 8 filed. 9 Q Well, he's referring to filed patents, is 10 he not? 11 A But he's talking about himself personally. 12 This is an Employee Agreement. 13 Q So what's your understanding of why a 14 person would list an invention on Exhibit A to that 15 Employment Agreement that was provided to him? 16 MR. SHEALY: Object to the form. You may 17 answer. 18 A Well, go back to the section with the 19 language. 20 Q 2.1? Is that where you want to go? 21 A Yes. 22 Q This is Defendants 204, page Bates labeled 23 Defendants 204. 24 A So what he's saying here is this is 25 something that had been created in the past before	Page 62 1 was made? 2 A No. I mean, it's the structure of 3 Brookhaven. I'm not an expert on the structure of 4 Brookhaven. You'd have to ask somebody that knows 5 about their corporate structure and their different 6 share structure. 7 Q So, this also refers 7.111 of the 8 Operating Agreement. Would that be the Operating 9 Agreement for, as defined below? What operating 10 agreement do you understand that to be referring to 11 right there in that second -- third WHEREAS clause? 12 A I think it would be the Brookhaven 13 Vascular Operating Agreement. But it would have to 14 be some Operating Agreement of Brookhaven's. It 15 could be the parent company. I don't know for sure. 16 Q It looks like they're talking about the 17 Operating Agreement dated December 30th of 2016. 18 A That would lead you to believe it's the 19 DiaxaMed Operating Agreement then. 20 Q Which I don't think we have a copy of that 21 either. Are you certain that an investment had been 22 made in Brookhaven prior to December 30th of 2016 by 23 one of your various investment entities? 24 A I am pretty sure, but I can't be a hundred 25 percent positive. But I'm pretty sure.
Page 61 1 he came to work for DiaxaMed, and it's not something 2 that's a proprietary right from him in this 3 Employment Agreement. 4 Q So, is he listing something that he 5 intends to maintain ownership of and not contribute 6 to DiaxaMed? 7 MR. SHEALY: Object to the form. 8 A I have no idea. 9 Q So you don't know as we sit here today 10 what the effect of that being listed on Exhibit A 11 was? 12 MR. SHEALY: Object to the form. 13 A I think we would have to have an attorney 14 address that. 15 Q Okay. This is the Purchase Agreement 16 dated June 1 of 2018. Can you see that on the 17 screen? 18 A Yes. 19 Q When were these Class B units from 20 Brookhaven Medical -- when was that transaction 21 initiated? 22 A I don't have direct knowledge of that. 23 Q But wouldn't that have been when you -- 24 when through your DXM holdings or ATEX, or whatever 25 vessel it was, that the initial capital investment	Page 63 1 Q Sorry for the delay here. Can you see 2 this screen here? 3 A I do not. 4 Q How about now? I meant to go to this one. 5 Can you all see that? 6 MR. SHEALY: Yes. 7 A Yes. 8 Q These are Requests for Production that 9 were served to CreatiVasc. Do you know if you had 10 any involvement in responding to these, Mr. 11 McMurray? 12 A I did not directly. Kirby had been in 13 touch with Fred Hutchinson and they worked together 14 on it. 15 Q Well, in response to all of these 37 16 requests, by my count we've received a total of 221 17 pages of documents. Do you think that's all that 18 there would be in response to all of those requests? 19 A I have no idea what the requests are. 20 Q Can you see my screen right now? 21 MR. SHEALY: Yes. 22 A Right. 23 Q Do you have any idea who Bob Altenbach is? 24 A He was the attorney that worked with 25 Brookhaven.

Page 64 1 Q And he had communications with Fred 2 Hutchison, presumably? 3 A I would think so, yes. 4 Q Can you see my screen right here? 5 A I see it says State of South Carolina, 6 County of Greenville. 7 Q I'm sorry. Hang on. Now do you see 8 Nicole Hayden up here? 9 A Yes. 10 Q She emails Altenbach on May the 30th of 11 2017 and says that she's attached the Supply 12 Agreement. Do you see that? 13 A Yes. 14 Q Did you or your counsel at any point in 15 time ever become made aware of these inquiries? 16 MR. SHEALY: Object to the form. You may 17 answer. 18 A No. 19 Q If you had been asked in May of 2017 about 20 the Sealevel Customer Supply Agreement, what would 21 your response have been? 22 A I didn't know anything about it. 23 Q But yet you said you decided -- you knew 24 that Sealevel had made this magnetic wand, right? 25 A Yes. I knew there had been work on a	Page 66 1 MR. SHEALY: Object to the form. You may 2 answer. 3 A I'm sorry. Could you repeat that? 4 Q Was there a decision or an effort to 5 exclude certain contracts for which you or your 6 counsel had knowledge of but just chose not to 7 include in the transfer? 8 A I'm not aware of any. 9 Q So, in that case, it is your belief that 10 it was just an oversight to not realize that 11 Sealevel had a contract with CreatiVasc that had a 12 ten-year term on it and an exclusive provision? 13 MR. SHEALY: Object to the form. You may 14 answer. 15 A I don't think it was an oversight. I 16 think that we were focused on what did we need for 17 the business to be successful going forward. We had 18 no interest in the magnetic wand. So we wouldn't 19 have investigated anything on the magnetic wand 20 because it wasn't something that we were interested 21 in. 22 Q So, how is it that a company acquires 23 another company's assets, certain assets but not all 24 of the obligations without having an express 25 provision stating that the obligation for the other
Page 65 1 magnetic wand. 2 Q And you knew that was a part of the patent 3 applications that had been acquired, correct? 4 A It was a portion of the patent 5 applications, yes. 6 Q Is it your belief that only some of -- 7 that this contract was not -- did not become an 8 obligation to DiaxaMed? 9 A I'm sorry. Can you repeat that? 10 Q The Sealevel Customer Supply Agreement 11 that we've gone over dated October 28th of 2014, and 12 it has two amendments to it that I'll show you 13 eventually, in a few minutes, is it your position or 14 belief that it is not -- did not become an 15 obligation of DiaxaMed when DiaxaMed succeeded to 16 the assets of Brookhaven Vascular and/or CreatiVasc? 17 MR. SHEALY: Object to the form. You may 18 answer. 19 A That is correct. The only obligations 20 were what was documented in the agreement. 21 Q So, was there a decision made as far as 22 you know to not include other contracts or 23 obligations that existed at the time that were 24 obligations of Brookhaven Vascular and/or 25 CreatiVasc?	Page 67 1 contract remains with CreatiVasc? 2 MR. SHEALY: Object to the form. You may 3 answer. 4 A I think that's a legal question. I'd have 5 to have a lawyer assist me in answering that 6 question. 7 MR. FEW: Okay. That last email that I 8 showed from Nicole Hayden dated May 30th of 9 2017 would be Exhibit 5, I believe? 10 THE COURT REPORTER: That's correct. 11 MR. FEW: And that's Defendants 2 and 3. 12 Now I'm showing you what we're going to 13 mark as Exhibit 6. And this an email from Fred 14 Hutchison. 15 --- 16 (Plaintiff's Exhibit Number 5, Email, 17 marked for identification.) 18 --- 19 BY MR. FEW: 20 Q Do you see that on the screen, Mr. 21 McMurray? 22 A Yes. 23 Q So, apparently, your client -- your 24 counsel was made aware of the inquiries by Sealevel 25 and its counsel in at least as early as June the 2nd

1 of 2017, right? 2 MR. SHEALY: Object to the form. You may 3 answer. 4 A It looks like there was a communication on 5 June the 2nd of 2017, yes. 6 Q And he says they bought assets and assumed 7 one contract but did not assume any obligations to 8 Sealevel. Do you see that? 9 A Yes. 10 Q So it appears that he knew at least that 11 early that they did not -- that they singled out 12 things that they wanted, that they took all of the 13 assets and some of the obligations but not all of 14 the obligations of CreatiVasc? 15 MR. SHEALY: Object to the form. You may 16 answer. 17 A I don't think that's what it says. He 18 said it did not assume any obligations to Sealevel. 19 He probably went back and looked at the contract and 20 is stating what's in the contract. 21 Q He said they assumed one contract but did 22 not assume any obligations to Sealevel? 23 A Correct. So that leads me to believe that 24 he went back and read the document. I'm sure, like 25 you, Fred's a busy guy. This is what? Six, seven	Page: 68 1 CreatiVasc personnel in early November 2016 about 2 the production of new prototypes. We're just trying 3 to figure out what's going on here." 4 When did Steve Johnson tell you that the 5 Sealevel Supply Agreement had been terminated? Do 6 you see that? 7 A I do. 8 Q So, Mr. Hutchison is aware of a Sealevel 9 Supply Agreement on June the 1st of 2017, right? 10 MR. SHEALY: Object to the form. 11 A That seems to be the case. 12 MR. FEW: Okay. All right. We'll make 13 that Exhibit 6. And that's pages 3 and 4, I 14 believe. Hold on. 3, 4 and 5. Is it 3, 4 and 15 5 or just 4 and 5? Hang on. I think it's just 16 4 and 5. My bad. 17 BY MR. FEW: 18 Q Then were you ever made aware of this 19 letter from Tom O'Hanlan of Sealevel dated June 26 20 of 2017? 21 A No. 22 Q This will be Exhibit 7. 23 - - - 24 (Plaintiff's Exhibit Number 7, Letter 25 with Invoice, marked for identification.)
Page: 69 1 months later; and reported back what was in the 2 contract. 3 Q Okay. So, any obligation remained with 4 CreatiVasc. Is that what your understanding is? 5 MR. SHEALY: Object to the form. You may 6 answer. 7 A That's what the last sentence says. 8 Fred's a lawyer. I am not. 9 Q Were you made aware of these 10 communications? 11 A I was asked about if we had any interest 12 in the technology of the wand, and I told Fred that 13 we do not. 14 Q So, at that point in time he knew of the 15 contract, right? 16 A I don't know what Fred knew. 17 Q Okay. She says -- the email that's sent 18 to him on June the 1st of 2017 on behalf of John 19 Campbell with Nelson Mullins, says: "The most 20 recent communication between Sealevel and CreatiVasc 21 is attached. This is close to when we think 22 DiaxaMed purchased CreatiVasc. Steve Johnson sent 23 an email to Sealevel in early January under a 24 DiaxaMed signature label, and Sealevel 25 sales/engineering people had conversations with	Page: 70 1 - - - 2 BY MR. FEW: 3 Q And this is part of it. It's an invoice 4 for engineering services for \$321,540. No one ever 5 told you about that, Mr. McMurray? 6 A I am not aware of that document. 7 Q Steve Johnson testified that when he was 8 terminated that he had to leave everything that was 9 on his computer at the facility and that DiaxaMed 10 took it over. Are you aware of that? 11 A It was company property, and that would be 12 standard of a company computer. 13 Q And so all communications between Steve 14 Johnson and Frank Patterson and anybody acting on 15 behalf of CreatiVasc with Sealevel over the time 16 period that Sealevel was working to collaboratively 17 develop the hemoaccess device were included on what 18 DiaxaMed took, weren't they? 19 MR. SHEALY: Object to the form. You may 20 answer. 21 A I have no idea what was on Steve's 22 computer. 23 Q Well, are you aware that any intellectual 24 property of Sealevel was taken off of his computer? 25 A I have no idea what was done with his

Brian McMurray

1 computer. 2 MR. FEW: Okay. 6 and 7 will be the 3 Exhibit 7. 4 BY MR. FEW: 5 Q The next page is a Non-Disclosure and 6 Confidentiality Agreement between Sealevel and 7 CreatiVasc. Do you see that? 8 A Yes. 9 Q Were you -- have you ever seen that 10 document or been made aware of it prior to today? 11 A No. 12 Q That's signed by Steve Johnson at the 13 bottom? 14 A Yes. 15 Q Do you have any reason to think that this 16 document was withheld when you were looking at 17 making an investment into Brookhaven Vascular? 18 MR. SHEALY: Object to the form. You may 19 answer it. 20 A I have no idea. 21 Q But if all of the emails and drawings and 22 concepts and ideas that were contributed by Tom 23 O'Hanlan and/or others on behalf of Sealevel are 24 part of what DiaxaMed took when it took Steve 25 Johnson's computer, then you all are in possession	Page 72	1 Q Who else? 2 A Our HR manager and our employment lawyer. 3 Q HR manager for who? 4 A We have an HR manager for a number of the 5 companies. We have a shared resource company called 6 360 Associates. 7 Q 360 Associates. And what do they do? 8 A They provide support to our various other 9 companies and IT and accounting and HR and materials 10 planning. 11 Q Companies including ATEX and McMurray 12 Fabrics? 13 A Yes. 14 Q And DiaxaMed? 15 A Yes. 16 Q This Confidential Separation Agreement, do 17 you see that? 18 A Yes. 19 Q Is this something that was prepared by 360 20 Associates or legal counsel? 21 A Legal counsel. 22 Q And then it's not signed. But do you 23 think you signed it eventually? 24 A Yes. 25 Q All right. That was Exhibit -- that that	Page 74
1 of all of their intellectual property, aren't you? 2 MR. SHEALY: Object to the form. You may 3 answer. 4 A It's standard company policy on a 5 company-issued computer when somebody is terminated 6 to take their computer. 7 Q So that's a yes? 8 A I would say -- 9 MR. SHEALY: Object to the form. 10 A I would say that computer has long ago 11 been wiped and disposed of. 12 Q Do you know that for sure, or are you just 13 presuming? 14 A That's our normal -- that's our normal 15 practice. 16 Q Who made the decision -- when was the 17 decision made to terminate Steve Johnson? 18 A You have the termination document there. 19 Q Well, I know when it happened. It 20 happened on March the 30th of 2017. 21 A I assume it was in a similar timeframe as 22 that. 23 Q Who all was involved in the decision to -- 24 in that decision other -- were you involved in it? 25 A I was.	Page 73	1 will be Exhibit 9, I believe, Jenny. 2 THE COURT REPORTER: It's Exhibit 8. 3 MR. FEW: 8. I wanted the Non-Disclosure 4 to be 8 which was -- this would be 8 which is 5 Defendants 000008, just that one page, dated 6 September 29 of 2014. 7 THE COURT REPORTER: Okay. That will be 8 8. 9 --- 10 (Plaintiff's Exhibit Number 8, 11 Non-Disclosure Confidentiality Agreement, 12 One Page, marked for identification.) 13 --- 14 BY MR. FEW: 15 Q And so, Mr. McMurray, that means that this 16 document, this Non-Disclosure Confidentiality 17 Agreement was produced by your attorneys in this 18 lawsuit. This will be Exhibit 9 then, the -- 19 A I have no knowledge of that. But if Kirby 20 concurs with that -- 21 Q Well, they've put -- that's their Bates 22 label on it. That's what I'm saying. 23 A You're talking about Steve's termination 24 agreement? 25 Q Yeah. No. I'm talking about the -- this,	Page 75

Page 76 1 the Non-Disclosure and Confidentiality Agreement 2 between CreatiVasc and Sealevel. 3 A Fine. 4 Q Back to this other, the Confidential 5 Separation Agreement will be Exhibit 9. And that's 6 Defendants 199 to 202. 7 --- 8 (Plaintiff's Exhibit Number 9, 9 Confidential Separation Agreement, marked 10 for identification.) 11 --- 12 MR. FEW: Then Exhibit 10 will be this 13 March 30th, 2017 letter which is Defendants 197 14 and 198. 15 --- 16 (Plaintiff's Exhibit Number 10, 17 Letter dated March 30, 2017, marked for 18 identification.) 19 --- 20 BY MR. FEW: 21 Q Mr. McMurray, you signed this letter. And 22 it says it's hand delivered. So did you come down 23 and give this to Mr. Johnson in Greenville? 24 A Yes. 25 Q And he referred to a Non-Disparagement	Page 78 1 information, or is stuff stored on a server? How is 2 information stored by your employees? 3 MR. SHEALY: Object to the form. 4 A Well, if somebody has a laptop, their 5 information is stored on it; you know, on a laptop. 6 I mean, if it's inventory records and things like 7 that, that's going to be stored, you know, on a 8 server. 9 Q Is it standard practice to have a 10 Non-Disparagement Agreement in a Confidential 11 Separation Agreement? 12 A Yes. 13 Q Do you know where those provisions are? 14 I'm sorry. 15 A I don't know specifically. We could read 16 through the agreement. Kirby may know where they're 17 at. But -- there it is. 18 Q Section 5. Well, that's actually part of 19 the Asset Protection Agreement that he signed as a 20 part of becoming an employee back in January, right? 21 A Looks like it 22 Q A couple more questions, and then we'll 23 take a break and then try to wrap up. Okay. Can 24 you see the screen now? 25 A Yes.
Page 77 1 Agreement. Do you know what that was about? Is 2 that part of the Separation Agreement? 3 A I would think so. 4 Q That letter that we're looking at, this 5 one here, March the 30th, was that prepared by your 6 counsel? 7 A Yes. 8 Q And then you say at the exit meeting you 9 expect to receive his laptop, flash drives, 10 passwords, any other thing that is owned. Correct? 11 A Correct. 12 Q And that would be all the same stuff that 13 he had had when he was the CEO of CreatiVasc, right? 14 MR. SHEALY: Object to the form. 15 A I don't know if he was issued a new 16 computer with DiaxaMed or not. 17 Q If he had a new computer, he would have 18 transferred, you know, the information that he had 19 on the old one over, don't you think? 20 MR. SHEALY: Object to the form. 21 A I don't know what he would have done. 22 Q Well, when you're -- does 360 Associates 23 handle the issuance of new computers to employees? 24 A It does. 25 Q And do they have a practice of deleting	Page 79 1 Q This is an email from Robert Altenbach 2 that says copied to Steve Johnson. But Steve 3 Johnson no longer -- is not even working for 4 CreatiVasc anymore, is he? 5 A I think that's past the date when he was 6 terminated. That's correct. 7 Q And CreatiVasc didn't really exist anymore 8 either since it was acquired by Brookhaven Vascular. 9 Is that an accurate statement? 10 A Yeah. I think they still used the 11 creativasc.com email address. But that's 12 speculation on my part. 13 Q Did that continue for how long? Did 14 they -- do you know? 15 A I don't. 16 Q Did any of the people that were hired 17 under the DiaxaMed name use the creativasc.com? 18 A No. They were converted over. 19 Q This says that Altenbach was able to reach 20 Brian. And would that be you? Did you have a 21 conversation with Robert Altenbach? 22 A I could have. It's a long time ago. 23 MR. FEW: All right. I'm going to -- this 24 will be -- that those first five pages will be 25 Exhibit 11. Is that right?

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1 THE COURT REPORTER: Yes, sir. 2 MR. FEW: And those are the emails from 3 May the 30th to June 13th between Nicole and 4 Robert Altenbach. 5 --- 6 (Plaintiff's Exhibit Number 11, 7 Emails, marked for identification.) 8 --- 9 MR. FEW: Then Exhibit 12 will be this 10 letter here from Brookhaven Medical. 11 --- 12 (Plaintiff's Exhibit Number 12, 13 Letter, marked for identification.) 14 --- 15 BY MR. FEW: 16 Q Had you ever seen -- were you aware of the 17 existence of this letter? 18 A No. 19 Q Do you know if Mr. Hutchison had anything 20 to do with this or if he was aware of it? 21 A I don't know. I wouldn't think so. It 22 looks like it's a communication from Brookhaven 23 Medical to Sealevel. 24 Q So you would agree with me that if as a 25 matter of law or as a legal matter that the court	1 Q And that would have been communicated to 2 Steve Johnson and others, correct? 3 MR. SHEALY: Object to the form. 4 A Well, that was the direction that we were 5 going in. So Steve was aware of that, yes. 6 Q Steve was aware of it. He would have been 7 aware of it even before the transaction occurred on 8 December 30th of 2016, right? Because it was 9 specifically not included in that -- 10 A I can't say when he became aware of it. 11 Q Well, who all was involved in the 12 negotiations leading up to the December 16th 13 Contribution Agreement? 14 A John Feltman, their legal counsel, Bob 15 Altenbach, and Steve to some extent. 16 Q It's signed by Feltman and Johnson? 17 A Correct. 18 Q So is it your testimony that they knew 19 that the Sealevel contract was not being assumed by 20 DiaxaMed? 21 A I don't know what they knew or didn't 22 know. 23 Q Well, they knew what was in Exhibit A, 24 presumably, right? Do I need to go to that? 25 A I don't know. I've seen people sign
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1 finds that DiaxaMed can't pick and choose, can't 2 take all assets but only some of the liabilities, 3 then DiaxaMed is responsible to Sealevel for its 4 Customer Supply Agreement obligations? 5 MR. SHEALY: Object to the form. 6 A I didn't say that and I don't agree with 7 that. DiaxaMed is responsible for what was in the 8 Purchase Agreement that was executed. 9 Q So the obligation to Sealevel remained 10 with who? Did it evaporate? Did it just go away? 11 MR. SHEALY: Object to the form. 12 A It's with Brookhaven. 13 Q It's with Brookhaven Vascular; is that 14 right? 15 MR. SHEALY: Object to the form. 16 A It has nothing to do with DiaxaMed. 17 Q Because DiaxaMed took affirmative steps 18 not to assume the Sealevel contract, right? 19 A No. 20 MR. SHEALY: Object. 21 A No. DiaxaMed assumed the things that they 22 needed to move the business forward. And as I 23 stated before, that's what they were focused on. 24 There is no interest in that other technology and it 25 wasn't even looked at.	1 documents that they haven't read. I can't tell you 2 what they knew or what they didn't do or -- you need 3 to talk to them. 4 Q I have. All right. Can you see the 5 screen again? 6 A Yes. 7 Q Okay. This is the page -- there is the 8 Exhibit A with the contributed assets and just the 9 one contract, right? 10 A Yeah. And a contract that I was very 11 familiar with because it was with ATEX Technologies. 12 Q And it was also with CreatiVasc, wasn't 13 it? 14 A It was either with CreatiVasc or 15 Brookhaven. You would have to pull the document up. 16 Q I can do that, refresh your memory. This 17 is the agreement entered into by ATEX Technologies, 18 Inc. and CreatiVasc Medical, Inc., effective 19 February 18th of 2015. Do you see that? 20 A Yes. So it is with CreatiVasc. 21 Q All right. Let's take a break until 20 22 after, and then I'll try to wrap things up. 23 --- 24 (Off the record.) 25 ---

(On the record.) Page 85 1 BY MR. FEW: 2 Q Let's roll with what we've got here. Mr. 3 McMurray, I'm going to show you a letter that was 4 written by Jason Jennings as counsel to DiaxaMed on 5 October 25th of 2018. Do you know -- were you aware 6 of this representation by Jason Jennings on behalf 7 of DiaxaMed? 8 A I -- I'd have to study this. You know, 9 they handle a lot of patents for DiaxaMed. I don't 10 keep up with all of the correspondence that patent 11 attorneys write. 12 Q Understood. Very fair. But so, Dority & 13 Manning does do some of the patent prosecution for 14 DiaxaMed? 15 A Yes, they do. 16 Q And I guess that's just continue -- did 17 you all have a relationship with them prior to 18 getting involved in this hemoaccess device? 19 A I don't think so. But we do use a number 20 of different patent attorneys. But I don't think 21 so. I think they are handling this matter. 22 Q Okay. So, who do you think would have 23 been the person that would have been communicating	Page 86 1 Q Frank Patterson, it looks like, says that 2 they met with ATEX and showed them the pump 3 controller that Sealevel was developing and that 4 ATEX was extremely impressed. Do you recall that? 5 That was in March of 2015? 6 A I do not. 7 Q Do you recall if you were made aware of 8 the pump controller that Sealevel was developing in 9 March of 2015? 10 A I don't recollect that. 11 Q John Druga, who is that? 12 A He worked with us in business development. 13 Q Do you know if he came down and went to 14 the meeting that was held on November 3rd and 4th of 15 2015 on behalf of ATEX? 16 A I have no idea. 17 Q Stephanie Norris? 18 A Yeah. She is our VP of technology. 19 Q She's still with the company? 20 A Yes. 21 Q Does she have any involvement with 22 DiaxaMed? 23 A Some uncertain technical items. On the 24 seal graph that I mentioned, yes. 25 Q Is she an employee of DiaxaMed?
Page 85 1 with Jason in order to prepare this letter? 2 A Probably Lindsay Calcutt. When was it? 3 Q October of 2018. 4 A Yeah. Probably Lindsay Calcutt. 5 Q Right. Frank Patterson came to Raleigh to 6 meet with people from ATEX. Were you aware of that? 7 A Frank had come to meet with ATEX at some 8 point in time, yes. 9 Q Do you know of him -- did Steve Johnson 10 coordinate this -- I don't know what it's called. 11 It looks like an agenda to it. It looks like they 12 call the CreatiVasc meeting in Greenville that was 13 in early November of 2015; it looks like 14 November 3rd and 4th. Did you attend that on behalf 15 of ATEX? 16 A I'm sorry. I'm still seeing the Dority & 17 Manning document. 18 Q Yeah. I'm not showing that. I'm just 19 asking a question. I need to stop the share. 20 A Right. I have no recollection of that one 21 way or the other. It was a long time ago. 22 Q But representatives of ATEX came to that 23 along with people from Screwomatics and Sealevel 24 Systems? 25 A I'd have to see the agenda. I don't know.	Page 87 1 A No. She actually is an employee of 360 2 Associates. 3 Q How long has -- is 360 Associates like a 4 professional employer association, PEO? 5 A It's a company that we own, like I said 6 before, that provides shared services to our other 7 companies. 8 Q Yeah. But these people are like a -- are 9 you familiar with what a PEO is? 10 A No. 11 Q It's when someone, a company just 12 outsources -- they have employees but the employees 13 are actually paid by the Professional Employer 14 Organization. That's not what 360 is doing? 15 A No. 16 Q Okay. How does 360 allocate, you know, 17 who gets to use what resources? Do they keep up 18 with that? 19 A Yes. 20 Q And so those -- so, like, they kind of 21 keep track of their time, like lawyers do? 22 A It's with allocations, not with a timecard 23 system. But it's based on an allocation of 24 different projects; overall usage. 25 Q Let me take a two-minute break and I think

1 I'm done. Okay? 2 A Okay. 3 --- 4 (Off the record.) 5 --- 6 (On the record.) 7 --- 8 BY MR. FEW: 9 Q We're done. Mr. McMurray, thank you for 10 your time and your patience. And you are free to 11 go. 12 A Have a good afternoon. 13 --- 14 (Proceedings are concluded.) 15 --- 16 17 18 19 20 21 22 23 24 25	Page 88

CERTIFICATE OF REPORTER

I, Jennifer H. Williams, Registered Professional Reporter and Notary Public for the State of South Carolina, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 3rd day of October 2023, at Lexington County, South Carolina.

Jennifer H. Williams
Registered Professional Reporter
Notary Public
State of South Carolina
My Commission expires:
February 7, 2033

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