

Intuitive Surgical Inc. Derivative Litigation

COURT: Superior Court of the State of California, County of San Mateo
CASE NUMBER: No. CIV-526930
JUDGE: Hon. Gerald J. Buchwald
CASE CONTACTS: David Wales, Mark Lebovitch, Edward G. Timlin

Intuitive Surgical, Inc. (“Intuitive” or the “Company”) makes robotic surgical platforms that allow doctors to perform less invasive internal operations. Starting at least in 2012, Intuitive learned that the “tip cover” that insulated some of its electrified surgical instruments could crack during surgery, causing electricity to “arc” from the machine to the patients’ internal organs.

In July 2013, the FDA issued a warning letter to Intuitive, finding that the Company had underreported hundreds, if not thousands, of “arcing” events, resulting in severe injuries, burns, and even fatalities. An FDA warning letter is a serious regulatory event for a medical devices company like Intuitive, and caused the stock price to decline over 24%. Prior to the receipt of the FDA warning letter, but while aware of the underreported arcing complaints, Intuitive directors and officers sold hundreds of millions of dollars in Intuitive stock at all-time highs.

On March 25, 2014, Plaintiff sent a “books and records” demand to obtain Intuitive Board materials regarding the arcing complaints, FDA reporting procedures and practices, insider stock sales, and related topics. On June 3, 2014, Plaintiff filed a lawsuit in the Delaware Court of Chancery against the Intuitive Board and many of its officers for breach of fiduciary duty, derivatively on behalf of the Company. Plaintiff proceeded to fight off spirited pleading challenges from Defendants, which were resolved in Plaintiff’s favor on November 16, 2015.

After some procedural wrangling, discovery in Plaintiff’s case was consolidated into an action pending in the Superior Court for the State of California, San Mateo County (the “California Court”). Plaintiffs took accelerated discovery throughout the first half of 2016 in preparation for trial scheduled to begin in September 2016. Ultimately, Plaintiffs reviewed over 700,000 pages of discovery, took dozens of depositions, and fully briefed summary judgment and pretrial motions.

On September 15, 2016, following intense settlement negotiations and the efforts of a nationally recognized mediator, the parties executed a Memorandum of Understanding (the “MOU”) setting forth the material terms of the settlement (the “Settlement”) – one day before trial was to begin.

On August 8, 2017, the parties executed the Stipulation and Agreement of Settlement, further detailing the terms of the Settlement. [Click here](#). Per the Settlement, Defendants agreed to remit \$15 million in monetary recompense to the Company and enact a variety of critical corporate governance reforms to improve the Company’s FDA and insider-trading compliance.

On August 9, 2017, the Court entered the Scheduling Order directing the parties to provide notice of the settlement to stockholders, and scheduling a final approval hearing. On October 20, 2017, the Hon. Gerald J. Buchwald approved the settlement.