

OCT 15 2001

**AFTER HOURS DEPOSITORY
Robert R. Di Troia, Clerk
U. S. DIST COURT
W. D. OF TN, MEMPHIS**

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

MEDTRONIC SOFAMOR DANEK, INC.,)
)
Plaintiff,)

v.)

GARY K. MICHELSON, MD, and)
KARLIN TECHNOLOGY, INC.,)
)
Defendants.)

Civil Action No. 01-2373 GV

GARY K. MICHELSON, M.D., and)
KARLIN TECHNOLOGY, INC.,)
a California corporation,)
)
Counterclaimants,)

v.)

MEDTRONIC SOFAMOR DANEK, INC.,)
an Indiana corporation,)
)
Counterdefendant.)

GARY K. MICHELSON, M.D.,)
)
Third Party Plaintiff,)

v.)

SOFAMOR DANEK HOLDINGS, INC.,)
a Delaware Corporation,)
)
Third Party Defendant.)

JURY TRIAL DEMANDED

(85)

**THIRD-PARTY COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF
AND DECLARATORY RELIEF FOR BREACH OF CONTRACT,
FRAUD AND VIOLATION OF THE LANHAM ACT**

In accordance with Rules 19 and 20 of the Federal Rules of Civil Procedure, defendant, counterclaimant and third-party plaintiff Gary K. Michelson, M.D. ("Dr. Michelson"), for his claims for relief against third-party defendant Sofamor Danek Holdings, Inc. ("Holdings"), alleges as follows:

INTRODUCTION

1. Dr. Michelson is the named inventor of at least eighty-six issued patents in the United States and over one hundred fifty granted or pending foreign patents and applications, primarily covering inventions relating to spinal fixation, surgical implants, surgical instruments and surgical methods. His efforts and inventions have helped and continue to help make spinal surgery safer, more effective and less expensive.

2. This third-party complaint arises from the fraudulent inducement and subsequent breach of a settlement agreement (the "Three-Party Agreement") between Dr. Michelson, Holdings (which is an entity that third-party plaintiffs are informed and believe was set up to function as a repository for patent rights acquired by its parent, plaintiff and counterdefendant Medtronic Sofamor Danek, Inc. ("Medtronic") (collectively with Holdings, the "Medtronic Parties")), and a third party (Wright Medical Technology, Inc. ("Wright")) that

licensed certain rights in cervical plate technology to Holdings. Among other things, Medtronic, through Holdings, agreed in the Three-Party Agreement to provide name recognition to Dr. Michelson on all literature relating to products covered by the agreement after certain patents issued and also agreed to pay Dr. Michelson a royalty of 3% of net sales of the covered products, instead of the 8% to which Dr. Michelson would otherwise have been entitled. The Medtronic Parties -- who had superior knowledge and special information regarding the market for such products and their own sales of such products and their future plans for such sales -- induced Dr. Michelson to agree to this substantially lower royalty rate by falsely representing that the market was limited and of minimal value. Medtronic claimed this made the cervical plate technology less valuable to it unless it was able to retain more profits from its sales. In fact, Dr. Michelson is informed and believes and thereon alleges that Medtronic's sales of cervical plate products at the time were already substantially higher than the false numbers and lowball projections that the Medtronic Parties provided to induce Dr. Michelson to agree to the lower royalty rate, and that the Medtronic Parties knew that they would in the future sell far more of such products for a longer period and reap much greater profits from such sales than they represented. Had Dr. Michelson known the true facts, he would not have entered into the Three-Party Agreement and agreed thereby to a reduction in his royalty rate from 8% to 3%. Moreover, in violation of the Three-Party

Agreement, the Medtronic Parties did not mark the licensed products and literature with the proper patent numbers or provide Dr. Michelson with appropriate name recognition on the products and literature (even after receiving notice to do so under the Three-Party Agreement) and improperly deducted purported internal sales costs of Medtronic employees from royalty payments (calculated at the lower, fraudulently induced 3% rate) even though the Three-Party Agreement only allows deduction of "sales commissions actually given." Because these breaches occurred at the very outset of the agreement, it appears that at the time Medtronic, through Holdings, entered into the Three-Party Agreement, the Medtronic Parties had no intention of providing Dr. Michelson the patent markings and name recognition to which he was contractually entitled or of paying him the appropriate royalty. In further breach of the Three-Party Agreement, the Medtronic Parties have effectively frustrated and delayed Dr. Michelson's repeated requests for an audit under that agreement.

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under the laws of the United States, 28 U.S.C. §§ 1331 (federal question). Jurisdiction also arises under 28 U.S.C. § 1332(a) (diversity), in that the amount in controversy exceeds \$75,000, exclusive of costs and interest, and the action is between citizens of different states. This Court also has supplemental jurisdiction over Dr. Michelson's state law claims pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

5. Dr. Michelson is informed and believes and thereon alleges that Holdings has a regular and established place of business in this district and is thereby purposefully availing itself of the privilege of conducting activities in this forum.

THE PARTIES

6. Dr. Michelson is now and at all times material hereto has been a citizen of the State of California.

7. Holdings is a corporation organized under the laws of the state of Delaware with its home office and principal place of business at 1800 Pyramid Place, Memphis, Tennessee 38132.

8. Medtronic, formerly known as Sofamor Danek Group, Inc., is a corporation organized under the laws of the State of Indiana with its home office and principal place of business at 1800 Pyramid Place, Memphis, Tennessee 38132.

9. At all relevant times, Holdings has been a wholly owned subsidiary of Medtronic. Dr. Michelson is informed and believes and thereon alleges that Holdings was formed to function as a repository for patent rights acquired by Medtronic. Medtronic performed and performs the operational functions relating to such patent rights, including patent prosecution and enforcement, and product development, manufacture, marketing and sales.

10. At all relevant times, Medtronic and Holdings have had overlapping decision makers and Medtronic has been Holdings'

sole shareholder. Medtronic had complete dominion and control over Holdings and exercised this dominion and control such that Holdings was and is a mere conduit for and instrumentality of Medtronic's business.

11. In 1999, Medtronic merged with a subsidiary of the multi-national multi-billion dollar medical device company Medtronic, Inc. and became a wholly-owned subsidiary of Medtronic, Inc. The complete dominion and control and unity of purpose between Medtronic and Holdings continued and is continuing. At all relevant times, Medtronic and Holdings, located at the same offices in Memphis, Tennessee, have been operated and are continuing to operate as a single entity. There exists, and has existed, a unity of interest and ownership between Medtronic and Holdings such that any individuality and separateness between Medtronic and Holdings has ceased, and Holdings is the alter ego of Medtronic. In their dealings with Dr. Michelson, the Medtronic Parties have made no practical distinction between Medtronic and Holdings. Adherence to the fiction of separate existence would permit an abuse of the corporate privilege and would work an injustice against Dr. Michelson.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

12. As noted above, Dr. Michelson is the named inventor of at least eighty-six issued patents in the United States and over one hundred fifty granted or pending foreign patents and applications, covering inventions relating to spinal

fixation, surgical implants, surgical instruments and surgical methods.

13. Prior to 2001, Dr. Michelson was involved in a dispute with Wright, which also involved Medtronic because Medtronic had misappropriated certain technology of Dr. Michelson relating to devices known as cervical plates. Pursuant to a non-disclosure and confidentiality agreement, Dr. Michelson disclosed to Medtronic the prototype invention and demonstrated and explained the technology of an anterior cervical plating system relating to vertebrae fusion known as the MultiLock Technology. After studying the MultiLock Technology for months, Medtronic copied the device with insubstantial changes in an attempt to make it appear as if its device was different from Dr. Michelson's. In the meantime, Wright purchased the MultiLock Technology from Dr. Michelson and agreed, among other things, to grant no licenses or otherwise hypothecate the patents, as they were collateral for Wright's performance, and to pay Dr. Michelson an 8% royalty on all sales of MultiLock products.

14. After Dr. Michelson learned of Medtronic's infringing device, he attempted to facilitate an all around solution to the problem by suggesting that Medtronic purchase the technology, i.e., step into Wright's shoes pursuant to his agreement with Wright. Instead, Medtronic negotiated a contract with Wright giving Medtronic a prohibited license in exchange for an up-front fee paid to Wright and future royalty payments to Wright of only 3% (the "Danek License Agreement"). Wright's

continuing breaches of its agreement with Dr. Michelson resulted in litigation between Dr. Michelson and Wright.

15. On January 18, 2001, Dr. Michelson, Wright and Medtronic, through Holdings, entered into the Three-Party Agreement, which among other things transferred to Dr. Michelson the right to royalty payments under the Danek License Agreement. The Three-Party Agreement amended the Danek License Agreement and allowed Medtronic, through Holdings, to continue as a licensee of the MultiLock Technology so long as it, among other things, made the royalty payments to Dr. Michelson on net sales of MultiLock products -- at a rate of 3%, not the 8% which Dr. Michelson would otherwise have been entitled to from Wright -- and marked Dr. Michelson's patent numbers on the Medtronic Parties' MultiLock products and literature and gave Dr. Michelson appropriate recognition by the placement of his name on the products and literature, along with a legend on the literature stating that the products were licensed under Dr. Michelson patents. The Medtronic Parties induced Dr. Michelson to agree to the substantially lower 3% royalty rate by misrepresenting the value of and market for the cervical plate technology. In particular, the Medtronic Parties provided Dr. Michelson with projections of future sales of cervical plate products projecting that the products would have only a five-year life in the market and would generate at most \$30 million in revenues per year. The Medtronic Parties -- who had superior knowledge and special information regarding the market for such products as a result of Medtronic's

position as a preeminent manufacturer and seller of spinal implant technology and its own sales of such products -- represented that this supposedly limited market for the cervical plate products had little value to them without additional financial incentive in the form of a higher profit margin. Dr. Michelson is informed and believes and thereon alleges that at the time, the Medtronic Parties knew that Medtronic was already selling substantially more cervical plate products than shown in the false numbers and projections the Medtronic Parties provided to Dr. Michelson, and that the Medtronic Parties knew that the market for such products was not limited to five years or to \$30 million per year and that they had plans to and would in the future sell far more products for a far longer period of time, and reap far greater profits from sales of such products, than they represented to Dr. Michelson.

16. The Three-Party Agreement prohibits the Medtronic Parties from deducting sales commissions not "actually given." Notwithstanding this clear language, the Medtronic Parties have consistently understated net sales by, among other things, deducting from sales revenues for the MultiLock Technology nondeductible costs purportedly based on sales made by Medtronic employees that were never actually paid to any third parties.

17. The Three-Party Agreement requires the Medtronic Parties to "keep good and accurate books of account sufficient to permit determination of the royalties due hereunder and [to] make such books of account available for inspection by an independent

accountant designated by [Dr. Michelson]." As a consequence of the Medtronic Parties' underpayment of royalties, among other things, Dr. Michelson demanded access to the Medtronic Parties' records to conduct an audit that would determine the full extent to which the Medtronic Parties have underpaid Dr. Michelson under the Three-Party Agreement. For months, the Medtronic Parties have effectively frustrated and delayed Dr. Michelson's requests for an audit.

FIRST CLAIM FOR RELIEF

(Breach of Written Contract)

18. Dr. Michelson realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.

19. On or about January 18, 2001, Dr. Michelson, Medtronic, through Holdings, and Wright entered into the Three-Party Agreement.

20. Pursuant to the Three-Party Agreement, Dr. Michelson allowed Medtronic, through Holdings, to remain a licensee of and to make, use and sell the MultiLock products (as defined in the Three-Party Agreement). In return, the Three-Party Agreement requires the Medtronic Parties to, among other things:

(a) Pay Dr. Michelson a royalty on net sales of such MultiLock products, based on a definition of net sales that allows deduction of "sales commissions" from gross sales revenues only to the extent of any commissions "actually paid";

(b) Allow Dr. Michelson to audit the Medtronic Parties' records to verify their compliance with the Three-Party Agreement; and

(c) Mark all MultiLock products and literature with the appropriate patent numbers of the patents licensed to the Medtronic Parties, and give Dr. Michelson name recognition by placing his name on the products and literature and placing on the literature the legend "Licensed under one or more of G. Karlin Michelson, M.D. Patent Nos. _____."

21. The Medtronic Parties have breached the Three-Party Agreement by, among other things, some or all of the following conduct:

(a) The Medtronic Parties have underpaid royalties due and owing to Dr. Michelson by understating net sales of MultiLock Technology through the improper deduction from gross sales revenues of fabricated employee sales costs that were never actually paid to any third party;

(b) For months, the Medtronic Parties failed and refused to allow access to their records for the purpose of an audit to determine their compliance with the Three-Party Agreement, despite proper demand therefor, and effectively frustrated and delayed Dr. Michelson's right to obtain an audit under the Three-Party Agreement;

(c) The Medtronic Parties have failed and refused to mark their MultiLock products and literature with the proper

patent numbers or to give appropriate name recognition on their products and literature to Dr. Michelson; and

(d) The Medtronic Parties have breached the implied covenant of good faith and fair dealing in the Three-Party Agreement.

22. Dr. Michelson has duly performed all of the conditions of the Three-Party Agreement, other than those conditions which have been waived by the Medtronic Parties or excused by their breaches of the Three-Party Agreement.

23. As a direct and proximate result of the Medtronic Parties' breaches of the Three-Party Agreement, Dr. Michelson has sustained damages in an amount to be proven at trial, but in no event less than \$75,000.

SECOND CLAIM FOR RELIEF

(Fraud)

24. Dr. Michelson realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. During the negotiations that preceded the Three-Party Agreement, the Medtronic Parties, who as a consequence of Medtronic's position as one of the world's preeminent manufacturers and sellers of spinal implant technology possessed special knowledge about the market for cervical plate products and its own sales in that market, made representations about the value of and the market for products based on Dr. Michelson's cervical plate technology. In particular, the Medtronic Parties

provided estimates of future sales projecting that the products would have only a five-year life in the market and would generate at most \$30 million in sales per year. The Medtronic Parties represented that this limited market had little value to them and that they required additional financial incentive, in the form of a reduction in Dr. Michelson's royalty rate that would give them a higher profit margin, to pursue it. The Medtronic Parties also represented and promised in the Three-Party Agreement and during the preceding negotiations that they would pay Dr. Michelson royalties and give him name recognition in accordance with the terms of the Three-Party Agreement and the Danek License Agreement as amended by the Three-Party Agreement.

26. The Medtronic Parties' foregoing representations and promises were in fact false. Dr. Michelson is informed and believes that the true facts were that at the time, Medtronic was already selling cervical plate products at levels far greater than shown in the projections the Medtronic Parties provided to Dr. Michelson, and that they knew that the market for such products was not limited to five years (indeed, they had plans to exploit the technology far into the future) or to \$30 million per year and that they would in the future sell far more products for a far longer period of time, and reap much greater profits, than they represented to Dr. Michelson. Instead, the Medtronic Parties intended for Dr. Michelson to enter into the Three-Party Agreement and thereby allow Medtronic, through Holdings, to remain a licensee of the MultiLock Technology pursuant to the

Danek License Agreement so that the Medtronic Parties could and would usurp for themselves the financial and other benefits of the MultiLock Technology.

27. Dr. Michelson is informed and believes and thereon alleges that when the Medtronic Parties made the foregoing representations and promises they knew them to be false, and made them with the intent to defraud and deceive Dr. Michelson and with the intent to induce Dr. Michelson to act in the manner herein alleged.

28. Dr. Michelson, at the time the foregoing representations and promises were made by the Medtronic Parties and at the time Dr. Michelson took the actions herein alleged, was ignorant of the falsity of the Medtronic Parties' representations and promises and believed them to be true. In reasonable reliance on those representations and promises, Dr. Michelson among other things entered into the Three-Party Agreement, thereby allowing Medtronic (through Holdings) to remain a licensee of the MultiLock Technology pursuant to the Danek License Agreement and agreeing to accept royalties on net sales of MultiLock products at the rate of 3% instead of the 8% that Dr. Michelson would otherwise have been entitled to from Wright. If Dr. Michelson had known of the actual facts, he would not have taken such actions.

29. As a direct and proximate result of the Medtronic Parties' misrepresentations and false promises, Dr. Michelson was induced to enter into the Three-Party Agreement, thereby allowing

Medtronic (through Holdings) to remain a licensee of the MultiLock Technology pursuant to the Danek License Agreement and agreeing to accept royalties on net sales of MultiLock products at the rate of 3% instead of the 8% he would otherwise have been entitled to from Wright. As a direct and proximate result of the foregoing, Dr. Michelson has sustained damages, including the difference between royalties calculated at the rate of 8% instead of the 3% rate he was fraudulently induced to agree to, in an amount to be proven at trial, but in no event less than \$75,000, and is entitled to all other appropriate legal and equitable remedies.

30. In acting as herein above alleged, the Medtronic Parties were guilty of fraud, oppression and malice and acted with the intent to vex, injure or annoy, and with conscious disregard of Dr. Michelson's rights. Dr. Michelson is therefore entitled to recover punitive or exemplary damages against the Medtronic Parties in an amount to be determined at trial, according to proof.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

31. Dr. Michelson realleges and incorporates by reference the allegations contained in paragraphs 1 through 30 above.

32. As alleged above, the Medtronic Parties fraudulently induced Dr. Michelson to enter into the Three-Party Agreement, thereby allowing Medtronic (through Holdings) to

remain a licensee of the MultiLock Technology and agreeing to accept royalties on net sales of MultiLock products at the rate of 3% instead of the 8% that Dr. Michelson would otherwise have been entitled to from Wright. As a consequence, the Medtronic Parties have obtained and continue to obtain profits equal to, at a minimum, the resulting differential of 5% of net sales of MultiLock products.

33. Given the acts of the Medtronic Parties alleged above, including, among other things, their fraudulent inducement of the Three-Party Agreement and their many and continuing breaches of contract, the Medtronic Parties' retention of such profits under such circumstances is inequitable and unjust.

34. The Medtronic Parties' inequitable and unjust enrichment has come at the expense of Dr. Michelson.

35. This injustice can be avoided only if the Medtronic Parties return to Dr. Michelson any profits they obtained through their fraudulent inducement of the Three-Party Agreement.

36. In order to determine the amount of the Medtronic Parties' unjust enrichment, an accounting of the profits obtained through their fraudulent inducement of the Three-Party Agreement is necessary.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief -- Danek License Agreement)

37. Dr. Michelson realleges and incorporates by reference the allegations contained in paragraphs 1 through 36 above.

38. The Three-Party Agreement provides, in relevant part, that Dr. Michelson "is a third party beneficiary of the Danek License Agreement" and grants Dr. Michelson the right, among others, to "terminate the Danek License Agreement pursuant to Section 5.3 thereof in the event of failure by [the Medtronic Parties] to comply with the terms of the Danek License Agreement, as amended by [the Three-Party] Agreement."

39. An actual controversy has arisen and now exists relating to the parties' respective rights and duties. For the reasons alleged above, Dr. Michelson contends that the Medtronic Parties have failed to comply with the terms of the Danek License Agreement, as amended by the Three-Party Agreement, and that Dr. Michelson is entitled to terminate the Danek License Agreement for that reason. Dr. Michelson is informed and believes, and on that basis alleges, that the Medtronic Parties dispute that they have failed to comply with the terms of the Danek License Agreement, as amended by the Three-Party Agreement, or that Dr. Michelson is entitled to terminate the Danek License Agreement.

40. Dr. Michelson desires a judicial determination of the parties' rights and duties under the Three-Party Agreement regarding the Medtronic Parties' compliance with the terms of the

Danek License Agreement, as amended by the Three-Party Agreement and Dr. Michelson's right to terminate the Danek License Agreement.

41. A judicial declaration is necessary and appropriate at this time in order that Dr. Michelson may know whether the Medtronic Parties' conduct constitutes a failure to comply with the terms of the Danek License Agreement, as amended by the Three-Party Agreement, entitling Dr. Michelson to terminate the Danek License Agreement. A judicial declaration will help eliminate uncertainties and controversies that otherwise might result in other litigation.

FIFTH CLAIM FOR RELIEF

(False Designation of Origin, Lanham Act, 15 U.S.C. § 1125)

42. Dr. Michelson realleges and incorporates by reference the allegations contained in paragraphs 1 through 41 above.

43. As alleged above, the Medtronic Parties have failed to give proper patent notice and to give appropriate name recognition in marking the products based on Dr. Michelson's technology and in their literature, including but not limited to, their advertising and marketing materials. Instead, the Medtronic Parties have knowingly and falsely described, claimed and/or conveyed the impression on the products and in various publications, including without limitation their advertising and marketing materials, that the products based on Dr. Michelson's

technology are in fact their own inventions or the inventions of their employees, agents or affiliates.

44. This false designation of origin has caused and is likely to cause confusion in the trade and in the marketplace and is likely to mislead, confuse and deceive consumers as to the source and origin of such products.

45. Dr. Michelson has been harmed by the Medtronic Parties' false designation of origin of the products based on Dr. Michelson's technology in an amount to be determined by the trier of fact. In addition to actual damages, as a result of being deprived of proper credit Dr. Michelson's reputation has not been enhanced commensurate with his work. By losing the enhanced reputation which would otherwise accompany Dr. Michelson's high-quality work, Dr. Michelson's future ability to sell or charge a premium for his inventions has been diminished.

46. As a direct and proximate result of the Medtronic Parties' false designation of origin, Dr. Michelson will continue to be irreparably damaged. Dr. Michelson is entitled to an injunction restraining the Medtronic Parties, their officers, agents and employees, and all persons acting in concert or participation with them, from engaging in any further such false designation of origin as alleged above.

47. Dr. Michelson is further entitled to recover from the Medtronic Parties the damages, including attorneys' fees, he has sustained and will sustain, and any gains, profits and advantages obtained by the Medtronic Parties as a result of the

Medtronic Parties' false designation of origin alleged above, in an amount to be proven at trial, and exemplary damages including treble damages.

PRAYER FOR RELIEF

WHEREFORE, Dr. Michelson prays for judgment against Holdings, as follows:

A. On the First Claim for Relief, that Dr. Michelson be awarded damages according to proof, but in no event for an amount less than \$75,000, plus accrued interest thereon.

B. On the Second Claim for Relief:

1. That Dr. Michelson be awarded damages according to proof, but in no event for an amount less than \$75,000, plus accrued interest thereon and all other appropriate legal and equitable remedies; and

2. That Dr. Michelson be awarded punitive or exemplary damages in an amount to be determined at trial, according to proof.

C. On the Third Claim for Relief, that the Medtronic Parties be ordered to render an accounting of and disgorge to Dr. Michelson any and all profits obtained by them as a result of their wrongful acts.

D. On the Fourth Claim for Relief, that the Court declare that the Medtronic Parties have failed to comply with the terms of the Danek License Agreement, as amended by the Three-Party Agreement, and that Dr. Michelson is entitled to terminate the Danek License Agreement for that reason.

E. On the Fifth Claim for Relief:

1. That Dr. Michelson be awarded preliminary and permanent injunctive relief:

a. Enjoining the Medtronic Parties and all of their officers, agents, servants, employees, and those persons in active concert or participation with them from directly or indirectly designating products based on Dr. Michelson's inventions as their own inventions or inventions of their employees, agents or affiliates;

b. Ordering the Medtronic Parties and all those acting in active concert or participation with them to turn over to Dr. Michelson any and all materials, including without limitation all advertising and marketing materials, designating products based on Dr. Michelson's inventions as their own inventions or inventions of their employees, agents or affiliates, as well as all artwork, or other material used to produce such materials;

c. Ordering the Medtronic Parties and all those acting in active concert or participation with them to turn over to Dr. Michelson any and all products based on Dr. Michelson's inventions which have been designated in any materials, including without limitation advertising and marketing materials, as inventions of the Medtronic Parties or their employees, agents or affiliates, together with any and all materials used to produce such products;

d. Ordering the Medtronic Parties, within thirty (30) days after the service of judgment upon them, with notice of entry thereof, to file with the Court and serve upon Dr. Michelson a written report under oath setting forth in detail the manner in which they have complied with subparagraphs a through c, supra;

2. For compensatory damages and disgorgement of the Medtronic Parties' profits according to proof; and

3. For treble and exemplary damages according to proof.

F. On all Counterclaims for Relief:

1. That Dr. Michelson be awarded his costs of suit;

2. That Dr. Michelson be awarded his attorneys' fees;

3. That Dr. Michelson be awarded prejudgment interest; and

4. That the Court grant such other and further relief as the Court may deem just and proper.

DATED: October 15, 2001

Respectfully submitted,



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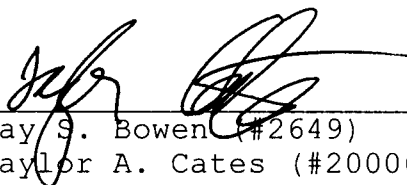
Attorneys for Defendant,
Counterclaimant and Third Party
Plaintiff Gary K. Michelson, M.D.
and Defendant and Counterclaimant
Karlin Technology, Inc.

DEMAND FOR JURY TRIAL

Dr. Michelson demands a jury trial on all issues so triable.

DATED: October 15, 2001

Respectfully submitted,



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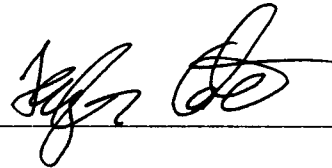
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via First Class United States Mail upon:

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this 15th day of October, 2001.



A handwritten signature in black ink, appearing to be 'Jeff St', is written above a horizontal line.