

1 Q It's not imaginary?

2 A Not imaginary.

3 Q I'm using that word because it's in your deposition.

4 I didn't make it up.

5 A You were asked a question. "You would agree that it's
6 a hypothetical risk that's based on valid science?"

7 You answered: "They are not imaginary." Do you agree with
8 that today?

9 A I'll accept that. They're not imaginary.

10 Q The Bair Hugger has the potential of nosocomial
11 transmission of pathogens while it's being use for
12 intraoperative warming, true?

13 A Yes, that's what it does.

14 Q Thank you. There is evidence that the Bair Hugger
15 increases particulates over the sterile field?

16 A Yes, that's true.

17 Q There are studies that you have reviewed and relied on
18 in this case that show that the Bair Hugger increases the number
19 of particulates over this sterile field by a thousand fold?

20 A I would say it's true. I'm not sure about the
21 thousand fold. Yes, definitely increases the particles.

22 Q Are you aware that the Legg 2013 study which came
23 after the Legg study that you showed the jury yesterday stated
24 that convection currents increase the particle concentration one
25 thousand fold by drawing potentially contaminated particles from



10 Q The Bair Hugger has the potential of nosocomial
11 transmission of pathogens while it's being use for
12 intraoperative warming, true?

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15 increases particulates over the sterile field?

16 A Yes, that's true.

17 Q There are studies that you have reviewed and relied on
18 in this case that show that the Bair Hugger increases the number
19 of particulates over this sterile field by a thousand fold?

20 A I would say it's true. I'm not sure about the

1 Q You would agree that the majority of squames carry
2 bacteria, true?

3 A I don't know if it's the majority but some squames
4 carry bacteria.

5 Q If you could please turn to tab 19 of your binder.

6 A Tab 19?

7 Q Yes. Do see the deposition transcript from this
8 matter, Ms. O'Haver's case?

9 A I do.

10 Q And if you could please turn to page 46, actually 49
11 which is the small number. Let me know when you're there, sir.
12 Do you see lines 18 through 21?

13 A Yes.

14 Q Under oath you were asked the question. "Well when he
15 says that the majority of squames carry bacteria, you are not
16 going to disagree with that, correct?"

17 Your answer under oath. "I won't go out and disagree with
18 that, no." Is that what you said?

19 A That was Dr. Anderson's testimony. I do not disagree.

20 Q You did not disagree that the majority of squames
21 carry bacteria, correct?

22 A What I said is I don't specifically remember that
23 meeting with Dr. Anderson but I won't challenge it.

24 Q So you won't challenge 3M's own expert, Dr. Anderson
25 who concluded that the majority of squames carry bacteria, true?



14 Q Under oath you were asked the question. "Well when he

15 says that the majority of squames carry bacteria, you are not

16 going to disagree with that, correct?"

17 Your answer under oath. "I won't go out and disagree with

18 that, no." Is that what you said?

19 A That was Dr. Anderson's testimony. I do not disagree.

1 Q So you are not aware of any other warming device that
2 increases bacteria over the sterile field besides the Bair
3 Hugger, true?

4 A True.

5 THE COURT: Counselor, we're going to go ahead
6 and take our morning recess. Folks, we'll get started at
7 11:10. Until you retire to consider your verdict you
8 must not discuss this case among yourselves or with others
9 or permit anyone to discuss it in your hearing. You should
10 not form or express any opinion about the case until it is
11 finally given to you to decide. The prohibition on
12 electronic communications and Internet use related to the
13 case remains in effect. We'll get started at 11:10.

14
15 Q So you are not aware of any other warming device that
16 increases bacteria over the sterile field besides the Bair
17 Hugger, true?
18
19
20
21

22 A True.
23

24 or perhaps before noon. We established just before the break
25 that it is her opinion that the Bair Hugger is the only device



1 airborne microorganisms colony forming units in the incidents of
2 periprosthetic joint infections."?

3 A I will accept the statement. It may be true.

4 Q You do not disagree?

5 A I do not disagree with you right now.

6 Q You're aware that the International Consensus found
7 that proposition to be true based on high-level evidence, true?

8 A I could look again but I'll accept what you say.

9 Q Assuming that the bacteria over the sterile field
10 increases the risk of infection, you agree that the Bair Hugger
11 can increase the risk of periprosthetic joint infection, true?

12 A True, hypothetically, yes.

13 Q If it is true that Bair Hugger increases bacteria, it
14 is also true that the Bair Hugger can increase the risk of
15 periprosthetic joint infection?

16 A Hypothetically, yes.

17 Q If it is true that there are studies showing a
18 statistically significant increase in the number of bacteria
19 from Bair Hugger, then it is true that the Bair Hugger increases
20 the risk of periprosthetic joint infections?

21 A Hypothetically.

22 Q The answer is yes?

23 A Yes, hypothetically.

24 Q Unlike the hypothetical risk posed by the Bair Hugger,
25 the Hotdog does not have such a hypothetical risk, true?



Q. Assuming that the bacteria over the sterile field increases the risk of infection, you agree that the Bair Hugger can increase the risk of periprosthetic joint infection, true?

A. True, hypothetically, yes.

Q. If it is true that Bair Hugger increases bacteria, it is also true that the Bair Hugger can increase the risk of periprosthetic joint infection?

A. Hypothetically, yes.

Q. If it is true that there are studies showing a statistically significant increase in the number of bacteria from Bair Hugger, then it is true that the Bair Hugger increases the risk of periprosthetic joint infections?

...

A. Yes, hypothetically.

1 A No.

2 Q Thank you. By using a non-forced air warming device
3 you avoid the hypothetical risk of forced air warming, true?

4 A That's probably true.

5 Q Is it true or is it probably true? It is true,
6 correct?

7 A I think it's true.

8 Q It is true, correct?

9 A I think it's true.

10 Q Have you said it is true?

11 A I think it's true.

12 Q Doctor Borak, I have to hurry up because you have to
13 leave at 11:30, correct?

14 A Close to that, yes, sir.

15 Q And you don't have time

16 A That's correct.

17 Q I've got a few more que
18 hook. The first one is you re not aware of any testing that
19 shows that the Bair Hugger is saf
20 A I'm not aware of any ev
21 Q Thank you. There is no
22 does not increase the risk of dee
23 A There's no evidence tha
24 Q There's no evidence tha
25 A There is evidence that



18 hook. The first one is you re not aware of any testing that
19 shows that the Bair Hugger is safe, true?

20 A I'm not aware of any evidence that it is safe.

21 Q Thank you. There is no evidence that the Bair Hugger
22 does not increase the risk of deep joint infection, true?

23 A There's no evidence that it does not.

1 Q You cannot tell this jury sitting here right here and
2 now on behalf of 3M that there's evidence that shows that the
3 Bair Hugger is safe for use in periprosthetic joint infection
4 cases, true?

5 A Correct. I can only say there's no evidence that it
6 is not safe.

7 Q There's not evidence that the Bair Hugger was safe to
8 use in the operation that Ms. O'Haver had when the Bair Hugger
9 was used on her, true?

10 A It's true.

11 Q Thank you.

12 MR. SACCHET: I'm done with cross-examination.

13
14 7 Q There's not evidence that the Bair Hugger was safe to
15
16 8 use in the operation that Ms. O'Haver had when the Bair Hugger
17
18 9 was used on her, true?

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21 10 A It's true.

22
23
24 Hugger blanket?

25 A No.





24 Q Now t wrap this up. You cannot say that the Bair
25 Hugger did not cause Ms. O'Haver's deep joint infection?

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1 A Yes, I agree. I said that before.

1 province of the jury. I said you can't tell this jury that
2 the Bair Hugger did not contribute to her infection.

3 THE COURT: That's a question for the jury to
4 decide. The objection is sustained.

5 Q Doctor Borak, you cannot exclude the Bair Hugger as a
6 potential cause of Ms. O'Haver's deep joint infection?

7 A I cannot exclude it

8 MR. SACCHET: Thank you.

9 THE COURT: May this witness be excused by the
10 defendant?

11 MR. BLACKWELL: Yes, Your Honor.

12 THE COURT: By the plaintiff? May this witness
13 be excused?

14

15

16 5 Q Doctor Borak, you cannot exclude the Bair Hugger as a

17 6 potential cause of Ms. O'Haver's deep joint infection?

18 7 A I cannot exclude it

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1 study, correct?

2 A Yes.

3 Q Now you labeled that study a randomized controlled
4 trial, correct?

5 A Yes.

6 Q The gold standard, correct?

7 A That's how they described it.

8 Q In your report in this case you never cited the Oguz
9 study, true?

10 A Honestly, I don't remember. Maybe not.

11 Q Do want to go through the report?

12 A No, I don't really want to go through a report. If
13 you tell me that, I think that I did. My memory is I don't
14 remember.

15
16 21

17 A I didn't say that the Bair Hugger was safe.

18
19 A Approved what?

20 Q That the Bair Hugger is safe?

21 A I didn't say that the Bair Hugger was safe.

22 Q So Oguz does not prove that the Bair Hugger was safe?

23 A The Bair Hugger in the Okuz study said there is no
24 difference in the Bair Hugger and the Hotdog in terms of
25 bacteria in and around the base of the operating room.

