

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

July 13 2005
BRUCE RIFKIN, Clerk
By [Signature] Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

COLUMBIA MEDICAL SYSTEMS,
INC.,
PHU NGUYEN,
TUYET NGUYEN, and
SESS MERKE,
Defendants

CR05 0270 TSZ

INDICTMENT

[Barcode]
05-CR-00270-INDI

The Grand Jury charges that:

COUNT 1

Conspiracy to Transport Stolen Property in Interstate Commerce

1. Beginning in or about 1998 and continuing through at least December, 2003, within the Western District of Washington and elsewhere, defendants COLUMBIA MEDICAL SYSTEMS, INC., PHU NGUYEN, TUYET NGUYEN and SESS MERKE knowingly conspired, confederated and agreed with each other and other persons both known and unknown to the Grand Jury, to commit the following offense against the United States: to cause goods and merchandise of a value of at least \$5,000 to be transported, transmitted and transferred in interstate and foreign

1 commerce, knowing the same to have been stolen, converted, and taken by fraud, in
2 violation of Title 18, United States Code, Section 2314.

3 **I. Background.**

4 At all times relevant to this Indictment:

5 2. COLUMBIA MEDICAL SYSTEMS, INC. (hereafter "CMS") was
6 registered as a Washington for-profit corporation in April, 1998, and continued as a
7 Washington corporation during all times relevant to this Indictment. CMS sold used
8 medical equipment. CMS was located in Mill Creek, Washington, later relocated to
9 Woodinville, Washington, and again relocated to Lynnwood, Washington, all within
10 the Western District of Washington.

11 3. Advanced Technology Laboratories ("ATL") was a medical device
12 company specializing in the design and manufacture of diagnostic ultrasound
13 equipment. Its principal place of business was in Bothell, Washington, within the
14 Western District of Washington. ATL was acquired by Philips Medical Systems in
15 1998. The company will be referred to hereafter as ATL/Philips.

16 4. Defendant PHU NGUYEN was an owner and operator of CMS. Before
17 starting CMS in 1998, PHU NGUYEN was an employee of ATL/Philips from
18 approximately 1982 to April, 1998.

19 5. Defendant TUYET NGUYEN, the wife of PHU NGUYEN, was an
20 owner and operator of CMS. TUYET NGUYEN was an employee of ATL/Philips
21 from approximately 1984 to September, 1998.

22 6. Defendant SESS MERKE was an employee of ATL/Philips from
23 approximately 1990 to September, 2000. SESS MERKE held numerous positions
24 while employed at ATL/Philips. His last position at ATL/Philips was Customer
25 Service Distribution Manager, a position he held from approximately February, 1998
26 until he left ATL/Philips in September, 2000. SESS MERKE's duties in this position
27 included (1) overseeing the movement, processing, and tracking of spare parts,
28 including ultrasound probes, into and out of ATL/Philips's Finished Goods Stockroom,

1 and (2) overseeing the movement, processing, and tracking of defective parts,
2 including ultrasound probes, into and out of ATL/Philips's Defective Materials
3 Stockroom.

4 7. Among the regularly used business records of ATL/Philips were Material
5 Transfer forms which were to be used to record information about the disposition of
6 ATL/Philips goods, including when goods were removed from the Finished Goods and
7 Defective Materials Stockrooms.

8 8. Among the items manufactured and sold by ATL/Philips were ultrasound
9 systems designed to produce images of internal parts of the human body, and the
10 components of such systems. One component of an ultrasound system is an item
11 known as a probe. An ultrasound probe is the part of an ultrasound system that has
12 contact with the body while the image is being made. There are different models of
13 probes that can be used for imaging of different parts of the body. Ultrasound probes
14 are also referred to as transducers and as scanheads.

15 9. The component parts of ATL/Philips ultrasound probes were
16 manufactured outside of the state of Washington, and shipped via interstate commerce
17 to Bothell, Washington, where the ultrasound probes were assembled.

18 10. ATL/Philips assigned a unique serial number to each individual probe it
19 manufactured. The serial number was displayed by means of a serial number label
20 affixed to the outside of the probe. This serial number record may be referred to
21 herein as the "externally-recorded serial number." The serial number for each probe
22 was also recorded on a computer chip within each probe. This serial number record
23 may be referred to herein as the "internally-recorded serial number." As manufactured
24 by ATL/Philips, the externally-recorded serial number and the internally-recorded
25 serial number for an individual probe were the same. ATL/Philips used the serial
26 number for multiple purposes, including tracking inventory, tracking probes by
27 purchaser, and accessing service and repair history of individual probes. ATL/Philips
28

1 would also use serial numbers to determine which customers would need to be
2 contacted in the event of a recall or service bulletin for a particular probe model.

3 **II. The Object of the Conspiracy.**

4 11. The object of the conspiracy was to steal certain goods from ATL/Philips,
5 including ultrasound probes, and to sell and transport them in interstate and foreign
6 commerce.

7 **III. Manner and Means of the Conspiracy.**

8 Defendants CMS, PHU NGUYEN, TUYET NGUYEN, SESS MERKE and
9 their co-conspirators used the following means, among others, to effect the purposes of
10 the conspiracy:

11 12. CMS, through actions of TUYET NGUYEN and PHU NGUYEN,
12 recruited ATL/Philips employees, including SESS MERKE, an ATL/Philips field
13 *service engineer whose initials are R.D.*, and others unknown to the Grand Jury, to
14 steal items from ATL/Philips and sell them to CMS.

15 13. On multiple occasions beginning in approximately late 1998 through at
16 least August, 2000, SESS MERKE took ultrasound probes and other ATL/Philips
17 goods, including circuit boards, out of ATL/Philips inventory without the permission of
18 ATL/Philips and without paying any compensation to ATL/Philips, and sold the goods
19 to CMS.

20 14. Throughout the time period that he was stealing, converting and taking by
21 fraud ATL/Philips goods to sell to CMS, SESS MERKE took steps to keep
22 ATL/Philips from learning of his actions, including:

23 (a) making false entries on ATL/Philips inventory related documentation such
24 as Material Transfer forms; and

25 (b) providing false and misleading explanations to an ATL/Philips employee
26 who questioned him about some of his entries on Material Transfer forms.

27 15. In or about early 2000, PHU NGUYEN asked R.D. if he would be
28 interested in a business arrangement whereby R.D. would obtain ATL/Philips probes

1 by false pretenses and sell them to CMS. On or about the same time, PHU NGUYEN
2 assured R.D. that the serial numbers on the ATL/Philips probes would be changed, and
3 that many of them would be sold overseas, in an apparent effort to assure R.D. that
4 tracing of the ATL/Philips probes would be impeded. R.D. agreed to obtain probes
5 and sell them to CMS.

6 16. On at least two occasions in 2000, R.D. obtained ATL/Philips equipment
7 from customers he was servicing for ATL/Philips, on false pretenses, and sold them to
8 CMS.

9 17. PHU NGUYEN and TUYET NGUYEN assisted certain of their
10 coconspirators, including R.D., in hiding the thefts from ATL/Philips by providing the
11 coconspirator with an ATL/Philips product to "replace" the one stolen from
12 ATL/Philips. Sometimes the "replacement" product was a broken or non-working
13 version of the product that had been stolen. When this occurred with R.D., R.D.
14 would return the non-working item to ATL/Philips as a purported exchange, so that
15 ATL/Philips would provide the customer a working, replacement item for the
16 purported exchange item.

17 18. CMS, PHU NGUYEN and TUYET NGUYEN, sometimes assisted by
18 other coconspirators, removed the original serial numbers on certain ATL/Philips
19 probes obtained by CMS through illegitimate means and replaced each removed serial
20 number with a different number, in an apparent effort to impede the ability to trace the
21 origins and movements of the probes. This was accomplished in numerous ways,
22 including the following:

23 (a) CMS, PHU NGUYEN and TUYET NGUYEN caused the transfer of
24 externally placed serial number labels from item to item, such as from an obsolete or
25 non-working piece of equipment to another piece of equipment.

26 (b) After the NGUYENs learned that ATL/Philips maintained the internally-
27 recorded serial number on a computer chip within an item, CMS and PHU NGUYEN
28 caused information from a computer chip within certain ATL/Philips probes to be

1 electronically copied, and subsequently downloaded onto another computer chip that
 2 was then installed into another ATL/Philips probe, thus replacing the original
 3 internally-recorded serial number. This practice was repeated on numerous occasions,
 4 resulting in the replacement of the original, authentic internally-recorded serial numbers
 5 of many ATL/Philips probes with other serial numbers.

6 19. CMS paid SESS MERKE in cash for the items he took from ATL/Philips
 7 and sold to CMS.

8 20. PHU NGUYEN and TUYET NGUYEN each made false statements to
 9 law enforcement investigators when questioned during investigations arising from
 10 reports by ATL/Philips that some of their ultrasound goods had been stolen.

11 **IV. Overt Acts In Furtherance of the Conspiracy.**

12 In furtherance of the conspiracy, and to effect its objects, the defendants CMS,
 13 PHU NGUYEN, TUYET NGUYEN, SESS MERKE and their co-conspirators,
 14 committed and caused to be committed the overt acts set forth in Counts 2 through 16
 15 of this Indictment, and the following overt acts, among others:

16 21. On or about the dates identified below, SESS MERKE created false or
 17 misleading entries in ATL/Material Transfer forms relating to certain ATL/Philips
 18 ultrasound probes as set forth below:

| Material Transfer document # | Date on Material Transfer document | False or Misleading Entry on Material Transfer document |
|------------------------------|------------------------------------|--|
| 146299 | 8/23/1999 | Merke transferred ATL Part Number 4000-0574-03, Serial Number 01BYBL, out of the Finished Goods Stockroom without adequately explaining the disposition of the item. |
| 160123 | 12/16/1999 | Merke transferred ATL Part Number 4000-0263-06, Serial Number 019PKC, out of Finished Goods Stockroom without adequately explaining the disposition of the item. |

| Material Transfer document # | Date on Material Transfer document | False or Misleading Entry on Material Transfer document |
|-------------------------------------|---|---|
| 152840 | 3/08/2000 | Merke transferred ATL Part Number 4000-0574-03, Serial Number 01C1KM out of the Finished Goods Stockroom without adequate explaining the disposition of the item. |
| 158422 and 158423 | 4/05/2000 | Merke transferred ATL Part Number 4000-0409-03, Serial Number 01C0RK out of the Finished Goods Stockroom without adequate explaining the disposition of the item. |
| 135890 | 8/1/2000 | Merke reported that ATL Part Number 4000-0409-03, Serial Number 01C08H, was transferred from the Finished Goods Stockroom to the field as a "field swap loaner." |

22. On or about the following dates, SESS MERKE shipped via Federal Express to or for the benefit of the NGUYENS and CMS, as identified below, certain ATL/Philips goods, without the authorization of ATL/Philips:

| Date Shipped | Shipping Information |
|---------------------|---|
| 10/31/1998 | Shipped from SESS MERKE in Bothell, WA to Yen/Columbia Medical, Chestnut Nails in Philadelphia, PA via Federal Express (tracking number 307092777687) |
| 11/23/1998 | Shipped from SESS MERKE in Bothell, WA to TAYET [sic] NGUYEN, Columbia Medical in Mill Creek, WA via Federal Express (tracking number 329083712836) |
| 4/16/1999 | Shipped from SESS MERKE in Bothell, WA to PHU/TUYET, Columbia Medical, 520 112 th Ave. NE, Bellevue, WA via Federal Express (tracking number 111327544540) |
| 4/26/1999 | Shipped from SESS MERKLE [sic] in Bothell, WA to Columbia Medical, 520 112 th Ave. NE, Bellevue, WA via Federal Express (tracking number 118162434540) |

23. On approximately 112 separate occasions beginning on or about February 26, 1999 through on or about September 26, 2000, PHU NGUYEN and TUYET NGUYEN prepared or caused to be prepared checks drawn on the CMS account and made payable to cash, and thereafter caused such checks to be converted to currency

1 which was then used to pay one or more coconspirators for the purchase of
 2 ATL/Philips goods. Some of these checks were signed by PHU NGUYEN, and others
 3 were signed by TUYET NGUYEN. Some of these checks were negotiated by PHU
 4 NGUYEN and others were negotiated by TUYET NGUYEN. The individual checks
 5 ranged in amount from Three Thousand Five Hundred Dollars (\$3,500.00) to Four
 6 Thousand Nine Hundred Seventy-seven Dollars (\$4,977.00). The total amount of the
 7 112 checks was Five Hundred Twelve Thousand Three Hundred Sixty-two and 04/100
 8 Dollars (\$512,362.04). Among these 112 occasions were the following:

| DATE | CHECK # | AMOUNT | CHECK MEMO | CHECK SIGNER | ENDORSEMENT NAME, IDENTIFICATION |
|-----------|---------|----------|-------------------------|--------------|-----------------------------------|
| 7/14/2000 | 7169 | 4,750.00 | Purchase probes (Merck) | Phu Nguyen | none |
| 7/18/2000 | 7181 | 4,925.00 | Probe purchased - Merck | Tuyet Nguyen | known |
| 7/21/2000 | 7192 | 4,950.00 | Probe purchased - Merck | Tuyet Nguyen | none |
| 7/22/2000 | 7193 | 4,855.00 | Probe purchased - Merck | Tuyet Nguyen | none |
| 7/25/2000 | 7194 | 4,950.00 | Probe purchased - Merck | Tuyet Nguyen | none |
| 7/25/2000 | 7195 | 4,900.00 | Probe purchased - Merck | Tuyet Nguyen | known |
| 8/3/2000 | 7212 | 4,700.00 | Probe purchased - Merck | Tuyet Nguyen | none |
| 8/16/2000 | 7226 | 4,915.00 | Probe purchase - Merck | Tuyet Nguyen | none |
| 8/18/2000 | 7239 | 4,775.00 | Probe purchase - Merck | Phu Nguyen | NGUYEPH401CQ |
| 8/26/2000 | 7242 | 4,350.00 | Purchase parts (Merck) | Tuyet Nguyen | none |
| 8/30/2000 | 7245 | 4,850.00 | Purchase parts (Merck) | Tuyet Nguyen | none |
| 8/31/2000 | 7255 | 4,900.00 | Purchase parts (Merck) | Phu Nguyen | Phu Nguyen WDL NGUYEPH401CQ |
| 9/13/2000 | 7271 | 4,750.00 | Purchase parts (Merck) | Phu Nguyen | none |

| DATE | CHECK # | AMOUNT | CHECK MEMO | CHECK SIGNER | ENDORSEMENT NAME, IDENTIFICATION |
|-----------|---------|----------|------------------------|--------------|----------------------------------|
| 9/22/2000 | 7296 | 4,600.00 | Purchase parts (Merke) | Phu Nguyen | WDL NGUYEPH401CQ |
| 9/26/2000 | 7297 | 4,750.00 | Purchase parts (Merke) | Phu Nguyen | WDL NGUYEPH401CQ |

24. On or about April 24, 2000, PHU NGUYEN wrote a CMS check (number 7004), to Atlantic Medical Systems, a company set up by R.D., in the amount of \$4,000.00, in payment for an ATL/Philips ultrasound probe that R.D. had obtained under false pretense from an ATL/Philips customer at the request of PHU NGUYEN.

25. On or about July 19, 2000, PHU NGUYEN wrote a CMS check (number 7188) to R.D.'s son, in the amount of \$5,500.00, in payment for an ATL/Philips ultrasound probe that R.D. had obtained under false pretenses from an ATL/Philips customer at the request of PHU NGUYEN.

26. On specific dates unknown to the Grand Jury but believed to be during the period from approximately 1998 through at least December 2003, CMS, PHU NGUYEN and TUYET NGUYEN caused labels that contained serial numbers that did not match the authentic serial number assigned to the ultrasound probes by ATL/Philips to be affixed externally on the ultrasound probes as identified below:

| Description of item | False Serial Number on External Label |
|------------------------|---------------------------------------|
| ATL Model No. C5-2 | 00PQB0 |
| ATL Model No. C5-2 40R | 00PQB0 |
| ATL Model No. C9-5 ICT | 00PQB0 |
| ATL Model No. C5-2 | 01BYBL |
| ATL Model No. C8-4V | 00PQCG |
| ATL Model No. C5-2 40R | 00PQB7 |

1 27. On or about the dates identified below, CMS, TUYET NGUYEN and
 2 PHU NGUYEN caused to be shipped, in interstate or foreign commerce, an
 3 ATL/Philips ultrasound probe which included an external serial number label
 4 referencing a false serial number that was not the authentic serial number assigned to
 5 that ultrasound probe:

| Date Shipped | Shipping Locations | Item Shipped | Price | False Serial Number on Label |
|--------------|---|------------------------|------------|------------------------------|
| 8/27/1999 | Shipped from Columbia Medical Systems in Mill Creek, WA to G.E. Health Care Services in New Haven, CT, via Federal Express (tracking number 790291004816) | ATL Model No. C5-2 40R | \$8,000.00 | 00PQB0 |
| 9/23/1999 | Shipped from Columbia Medical Systems, Inc. in Mill Creek, WA to Mount Sinai Hospital in Miami Beach, FL via Federal Express (tracking number 791794979807) | ATL Model No. C5-2 40R | \$8,000.00 | 00PQB0 |
| 11/23/1999 | Shipped from Columbia Medical Systems, Inc. in Mill Creek, WA to G.E. Health Care in Algonquin, IL via Federal Express (tracking number 792519043840) | ATL Model No. C5-2 | \$8,000.00 | 01BYBL |
| 3/31/2000 | Shipped from Columbia Medical Systems, Inc. in Mill Creek, WA to Stamford Hospital in Stamford, CT via Federal Express (tracking number 791066018124) | ATL Model No. C5-2 40R | \$8,000.00 | 00PQB7 |

| Date Shipped | Shipping Locations | Item Shipped | Price | False Serial Number on Label |
|--------------|--|-------------------------|--|------------------------------|
| 4/14/2000 | Shipped from Columbia Medical Systems, Inc. in Mill Creek, WA to G.E. Health Care in Randolph, MA via Federal Express (tracking number 791072391738) | ATL Model No. C8-4V | \$8,126.25 (\$8,250.00 less discount of \$123.75) | 00PQCG |
| 10/12/2000 | Shipped from Columbia Medical Systems, Inc. in Mill Creek, WA to G.E. Health Care in Mississauga, Ontario, Canada via Federal Express (tracking number 792376657844) | ATL, Model No. C9-5 ICT | \$8,372.50 (\$8,500.00 less discount of \$127.50) | 00PQB0 |

28. On or about November 6, 2001, TUYET NGUYEN made the following false statements, among others, to a Bothell Police Department detective:

- (a) That she and PHU NGUYEN did not buy any items from SESS MERKE.
- (b) That SESS MERKE never delivered any ultrasound probes to CMS.

29. On or about November 6, 2001, PHU NGUYEN made the following false statements to the Bothell Police Department: "Columbia Medical Systems has never purchased any items from Sess Merke. Sess was a former co-worker of my wife's when she worked at ATL but Columbia has never had any business dealings with him. Columbia Medical Systems has never sold any ultrasound equipment our [sic] products that we knew were stolen or illegally obtained."

30. On December 17, 2003, PHU NGUYEN made the following false statements to a Special Agent with the Food and Drug Administration:

- (a) That neither he nor his employees created new serial numbers.
- (b) That it was impossible to recreate serial numbers that had been issued by an Original Equipment Manufacturer.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2 - 5

Interstate Transportation of Stolen Property

31. Paragraphs 1 through 30 of this Indictment are hereby incorporated by reference.

32. On or about the dates set forth below, in the Western District of Washington and elsewhere, CMS, PHU NGUYEN and TUYET NGUYEN did cause to be transported, transmitted and transferred in interstate commerce, stolen goods, wares and merchandise, that is the specific medical equipment described below, of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud:

| Count | Date of Shipment | Shipping locations | Item | Sales Price |
|-------|------------------|---|--|-------------|
| 2 | 7/25/2000 | Shipped from Columbia Medical Systems in Mill Creek, WA to G.E. Ultrasound in Tulsa, Oklahoma via Federal Express (tracking number 790866138915) | ATL transvaginal ultrasound probe, Model No. C8-4V | \$8,250.00 |
| 3 | 8/10/2000 | Shipped from Columbia Medical Systems in Mill Creek, WA to Mount Sinai Medical Center in Miami Beach, FL via Federal Express (tracking number 791125675895) | ATL Model No. C8-5 | \$8,000.00 |

| Count | Date of Shipment | Shipping locations | Item | Sales Price |
|-------|------------------|--|--|--|
| 4 | 8/15/2000 | Shipped from Columbia Medical Systems in Mill Creek, WA to Duke University Hospital in Durham, NC via Federal Express (tracking number 791835316626) | ATL transvaginal ultrasound probe, Model No. C8-4V | \$8,126.25 (\$8,250.00 less discount of \$123.75) |
| 5 | 4/3/2002 | Shipped from Columbia Medical Systems in Mill Creek, WA to Milford Memorial Hospital in Milford, DE via Federal Express (air bill number 792011629426) | ATL Model No. L10-5 | \$5,115.00 (\$5,500.00 less discount of \$385.00) |

All in violation of Title 18, United States Code, Sections 2314 and 2.

COUNTS 6 through 11

Introduction into Interstate Commerce of Misbranded Medical Devices

33. Paragraphs 1 through 10 of this Indictment are hereby incorporated by reference.

34. The Food and Drug Administration (hereafter "FDA") regulates, among other things, medical devices. Title 21, United States Code, Section 321(h) defines a medical device, in pertinent part, as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is intended for use in the diagnosis of disease or other conditions, or in the cure, treatment, or prevention of a disease, in man or in animals, or intended to affect the structure or any function of the body of man or other animals.

1 35. ATL/Philips ultrasound probes are medical devices subject to FDA
2 regulation.

3 36. The introduction, or delivery for introduction, into interstate commerce of
4 a medical device that is misbranded is prohibited.

5 37. A medical device is misbranded if its labeling is false or misleading in any
6 particular.

7 38. On or about the dates identified below, in the Western District of
8 Washington and elsewhere, the defendants, COLUMBIA MEDICAL SYSTEMS,
9 TUYET NGUYEN and PHU NGUYEN, did, with the intent to defraud and mislead,
10 introduce and deliver for introduction into interstate commerce medical devices, as
11 described below, each of which was misbranded within the meaning of Title 18, United
12 States Code, Section 352(a), because the labeling was false and misleading, in that the
13 externally-recorded serial number, which was represented as an ATL/Philips serial
14 number, was not the authentic ATL/Philips serial number for the device, and by such
15 false mislabeling would impede the user of the device from obtaining pertinent
16 information about the device from ATL/Philips:

| Count | Date of Shipment | Description of Device | False and Misleading Serial Number Label | Interstate Shipment Information |
|-------|------------------|--|--|---|
| 6 | 7/25/2000 | ATL transvaginal ultrasound probe, Model No. C8-4V | 001HVF | Shipped from Columbia Medical Systems in Mill Creek, WA to G.E. Ultrasound in Tulsa, OK via Federal Express (tracking number 790866138915) |
| 7 | 8/10/2000 | ATL Probe, Model No. C8-5 | 001HVY | Shipped from Columbia Medical Systems in Mill Creek, WA to Mount Sinai Medical Center in Miami Beach, FL via Federal Express (tracking number 791125675895) |

| | | | | |
|----|-----------|---|--------|--|
| 8 | 8/15/2000 | ATL transvaginal ultrasound probe, Model No. C8-4V | 001HVE | Shipped from Columbia Medical Systems in Mill Creek, WA to Duke University Hospital in Durham, NC via Federal Express (tracking number 791835316626) |
| 9 | 4/3/2002 | ATL Probe, Model No. L10-5 | 016QLZ | Shipped from Columbia Medical Systems in Mill Creek, WA to Milford Memorial Hospital in Milford, DE via Federal Express (air bill number 792011629426) |
| 10 | 6/18/2001 | ATL Probe, Model No. C8-5 | 001HV3 | Shipped from Columbia Medical Systems in Mill Creek, WA to Maimonides Hospital, Brooklyn, NY via Federal Express (air bill number 790938721919) |
| 11 | 12/3/2002 | ATL Probe, Model No. C8-5 | HT1LCM | Shipped from Columbia Medical Systems in Woodinville, WA to Ultrascan in Mount Juliet, TN via Federal Express (air bill number 790645391848) |

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNTS 12 through 16

Holding for Sale Misbranded Medical Devices

39. Paragraphs 1 through 10 and 34 through 37 of this Indictment are hereby incorporated by reference.

40. On exact dates unknown to the Grand Jury but between the dates identified below, in the Western District of Washington and elsewhere, the defendants, COLUMBIA MEDICAL SYSTEMS, TUYET NGUYEN and PHU NGUYEN, did, with the intent to defraud and mislead, cause acts to be done with respect to ATL/Philips ultrasound probes, while these devices were held for sale, after components of the devices had been shipped in interstate commerce, which acts resulted in the devices being misbranded within the meaning of Title 18, United States Code,

1 Section 352(a), in that they placed and had placed upon the probes false serial numbers
2 which were represented as authentic ATL/Philips serial numbers:

| Count | Description of Device | False Serial Number | Date Range |
|-------|------------------------------|---------------------|--|
| 12 | ATL Probe, Model Number C5-2 | 01QXAI | On or after about 12/19/2001 and on or before 12/17/2003 |
| 13 | ATL Probe, Model Number C9-5 | 01T1A7 | On or after about 08/15/2002 and on or before 12/17/2003 |
| 14 | ATL Probe, Model Number C9-5 | 01T1A1 | On or after about 08/15/2002 and on or before 12/17/2003 |
| 15 | ATL Probe, Model Number C9-5 | 01QXAH | On or after about 08/15/2002 and on or before 12/17/2003 |
| 16 | ATL Probe, Model Number L7-4 | 001HVB | On or after about 05/2/2001 and on or before 12/17/2003 |

15 All in violation of Title 21, United States Code, Sections 331(k) and 333(a)(2) and
16 Title 18, United States Code, Section 2.

17 COUNT 17

18 **Conspiracy to Engage in Money Laundering**

19 41. Paragraphs 1 through 30 of this Indictment are hereby incorporated by
20 reference.

21 42. Beginning on or about February 26, 1999, and continuing until at least
22 September 26, 2000, in the Western District of Washington, and elsewhere, the
23 defendants, CMS, PHU NGUYEN, and TUYET NGUYEN, together with other
24 persons known and unknown to the Grand Jury, did unlawfully and knowingly
25 combine, conspire, confederate and agree together and with each other, to commit
26 certain offenses under Title 18, United States Code, Section 1956, as follows:

27 **I. The Purposes of the Conspiracy.**

28 43. The purposes of the conspiracy were:

1 (a) To conduct or attempt to conduct financial transactions affecting interstate
2 commerce involving proceeds of specified unlawful activity, that is, interstate
3 transportation of stolen property, in violation of title 18, United States Code, Section
4 2314, knowing that the property involved in the financial transactions represented the
5 proceeds of some form of unlawful activity, and with the intent to promote the carrying
6 on of the specified unlawful activity, all in violation of Title 18, United States Code,
7 Section 1956(a)(1)(A)(i); and,

8 (b) To conduct or attempt to conduct financial transactions affecting interstate
9 commerce involving proceeds of specified unlawful activity, that is, interstate
10 transportation of stolen property, in violation of Title 18, United States Code, Section
11 2314, knowing that the property involved in the financial transactions represented the
12 proceeds of some form of unlawful activity, and knowing that the transactions were
13 designed in whole or in part to conceal or disguise the nature, the location, the source,
14 the ownership, or the control of the proceeds of specified unlawful activity, all in
15 violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

16 **II. Manner and Means of the Conspiracy.**

17 Defendants CMS, PHU NGUYEN, and TUYET NGUYEN and their co-
18 conspirators used the following means, among others, to effect the purposes of the
19 conspiracy:

20 44. Within the Western District of Washington, and elsewhere, CMS, PHU
21 NGUYEN, TUYET NGUYEN and their co-conspirators caused checks made payable
22 to cash to be drawn on Bank of America account number 31241110 in the name of
23 CMS.

24 45. Within the Western District of Washington, and elsewhere, PHU
25 NGUYEN, TUYET NGUYEN and their co-conspirators caused such checks to be
26 converted to cash for the purpose of paying one or more coconspirators for stolen
27 ATL/Philips goods in a manner that concealed or disguised the nature, the location,
28 the source, the ownership or the control of the proceeds from sales of stolen

1 | ATL/Philips goods in interstate commerce, and for the purpose of continuing to carry
2 | on the illegal enterprise.

3 | 46. Within the Western District of Washington, and elsewhere, one or more
4 | coconspirators received said cash and, in return, provided CMS, PHU NGUYEN and
5 | TUYET NGUYEN with stolen ATL/Philips goods.

6 | 47. Within the Western District of Washington, and elsewhere, CMS, PHU
7 | NGUYEN and TUYET NGUYEN caused the stolen ATL/Philips goods to be
8 | transported in interstate commerce for sale, knowing that they were stolen and received
9 | proceeds from this illegal activity.

10 | **III. Overt Acts In Furtherance of the Conspiracy.**

11 | 48. In furtherance of the conspiracy, and to promote the objects thereof,
12 | defendants CMS, PHU NGUYEN, and TUYET NGUYEN, and other persons known
13 | and unknown to the Grand Jury, committed and caused to be committed, among others,
14 | the overt acts set forth in Counts 2 through 5, and paragraphs 23, 24 and 25 of this
15 | Indictment, which are incorporated by reference as if fully set forth herein.

16 | All in violation of Title 18, United States Code, Section 1956(h).

17 | **CRIMINAL FORFEITURE**

18 | 49. Upon conviction of the offense charged in Count 17 of this Indictment,
19 | CMS, PHU NGUYEN, and TUYET NGUYEN shall forfeit to the United States under
20 | the provisions of Title 18 United States Code, Section 982(a)(1) any and all property,
21 | real or personal, involved in said violation, and all property traceable to such property.
22 | The property subject to forfeiture as a result of the money laundering conspiracy
23 | charged in Count 17 of this Indictment, includes, but is not limited to, the following:

24 | **A. Money Judgment.**

25 | 50. A sum of money in excess of five hundred and twelve thousand dollars
26 | (\$512,000.00) in United States funds, representing the amount of proceeds involved in
27 | the offense charged in Count 17 of this Indictment, for which CMS, PHU NGUYEN,
28 | and TUYET NGUYEN are jointly and severally liable.

1
2 **B. Real Property.**

3 51. All that lot or parcel of land together with its buildings, appurtenances,
4 improvements, fixtures, attachments and easements, located at 21302 55th Avenue SE,
5 Woodinville, Washington, comprising a residence owned by PHU NGUYEN and
6 TUYET NGUYEN.

7 52. All that lot or parcel of land together with its buildings, appurtenances,
8 improvements, fixtures, attachments and easements, located at 21314 55th Avenue SE,
9 Woodinville, Washington, comprising a residence owned by PHU NGUYEN and
10 TUYET NGUYEN.

11 **C. Substitute Assets.**

12 53. If any of the above-described forfeitable property, as a result of any act or
13 omission of the defendants --

- 14 (a) cannot be located upon the exercise of due diligence;
- 15 (b) has been transferred or sold to, or deposited with, a third person;
- 16 (c) has been placed beyond the jurisdiction of the Court;
- 17 (d) has been substantially diminished in value; or
- 18 (e) has been commingled with other property which cannot be subdivided
19 without difficulty;

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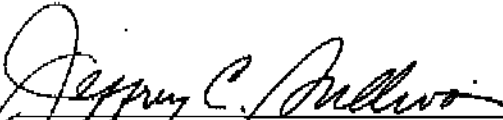
28 / / /

1 it is the intent of the United States, pursuant to 18 U.S.C. §§ 982(a)(1), 982(b)(1) and
2 21 USC §§ 853(e)(1)(A) and 853(p), to seek the forfeiture of any other property of
3 said defendants up to the value of the above-described forfeitable properties.

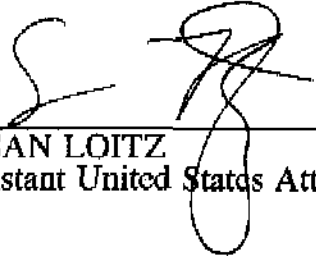
4 A TRUE BILL:

5 DATED: 13 JULY 2005

6
7
8 Signature of Foreperson redacted pursuant to
9 the policy of the Judicial Conference of the
10 United States

11 
12 JOHN MCKAY
13 United States Attorney

14 
15 FLOYD G. SHORT
16 Assistant United States Attorney

17 
18 SUSAN LOITZ
19 Assistant United States Attorney