

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

**DISTRICT COURT**  
**FOURTH JUDICIAL DISTRICT**

**CASE TYPE: OTHER CIVIL**

LEWIS MERENSTEIN, On Behalf of  
himself and All Others Similarly Situated,

Plaintiff,

-v-

MEDTRONIC, INC , RICHARD H.  
ANDERSON, SCOTT C. DONNELLY,  
VICTOR J. DZAU, OMAR ISHRAK,  
SHIRLEY ANN JACKSON, GOVERNOR  
MICHAEL O. LEAVITT, JAMES T.  
LENEHAN, DENISE M. O'LEARY,  
KENDALL J. POWELL, ROBERT C.  
POZEN, PREETHA REDDY, COVIDIEN  
PLC, NEW MEDTRONIC, and NEW  
MEDTRONIC SUB,

Defendants.

Court File No. 27-CV-14-11452

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff Lewis Merenstein ("Plaintiff") alleges as follows upon personal knowledge with respect to Plaintiff and Plaintiff's actions and upon information and belief as to all other allegations:

**INTRODUCTION**

1. This is a stockholder class action brought by Plaintiff on behalf of himself and all other similarly situated public stockholders of Medtronic Inc. ("Medtronic" or the "Company") against Medtronic and its Board of Directors (the "Individual Defendants") in connection with the Individual Defendants' breach of fiduciary duties arising out of their agreement to an

“inversion” merger (the “Inversion”) with an overseas entity, Covidien plc (“Covidien”), that will result in Medtronic terminating its Minnesota corporate personhood and becoming an Irish corporation.

2. The Inversion is to be structured essentially as a reverse merger: Medtronic will form a new Irish corporation, New Medtronic, in Covidien’s home country of Ireland, and New Medtronic will purchase both Medtronic and Covidien. The surviving company will be renamed “Medtronic.” Medtronic will relocate its domicile from Minneapolis to Dublin, Ireland, to take advantage of lower corporate tax rates. Each share of Medtronic will be converted into shares of the post-Inversion company on a one-for-one basis. Each share of Covidien will be converted into \$35.19 in cash and 0.956 shares of the post-Inversion company. Following the Inversion, Medtronic stockholders will be reduced to owning 70% of the post-Inversion company, while Covidien stockholders will own the remaining 30% in addition to their cash compensation. Unlike most stock-for-stock corporate mergers, the Inversion agreed to by Individual Defendants is deemed a taxable event for Medtronic stockholders. Thus, the Inversion will force thousands of Medtronic stockholders to dig into their pockets and pay taxes on any gains just to remain a stockholder.

3. After reaping the benefits that the United States has to offer in establishing and substantially growing the Company in Minnesota and providing stockholders with the important protections under Minnesota law, Medtronic now seeks to skirt its obligation to pay its fair share of taxes to the United States and instead seek tax shelter in Ireland as an Irish corporation, with far fewer stockholder protections under Irish law.

4. So long as 20% of the new company’s shares are owned by former Covidien stockholders, the post-Inversion company will pay Ireland’s corporate tax rate of 12.5% instead

of the United States' 35% maximum corporate rate, minus whatever tax breaks a company can find. The Inversion is conditioned on the fact that no new laws or regulations that would make this type of tax inversion illegal or prevent Medtronic from capitalizing on Covidien's lower tax rate.

5. While lower taxes are normally a positive development, this benefit will not offset the substantial losses to Medtronic stockholders forced to pay taxes on any gains in Medtronic stock. Indeed, because the sale does not generate cash proceeds that would allow stockholders to pay the taxes, Medtronic stockholders who have held the stock for over a year could see federal taxes rates of 15 to 30 percent on the gain. Indeed, the Individual Defendants have acknowledged the significant impact that this tax would have on Medtronic stockholders, particularly long-term stockholders who are more likely to have a low cost basis in their Medtronic stock.

6. Unlike public stockholders, the Individual Defendants have granted themselves a unique tax break, as the Company has agreed to indemnify the Individual Defendants and other corporate insiders for the excise tax they would otherwise have to pay. This unique benefit to the Individual Defendants – which is estimated to be whopping \$68 million – gives them an extra benefit in the Inversion, and further increases the cost of the transaction.

7. Faced with potential corporate tax reform or significant restrictions on inversions in the United States, the Individual Defendants rushed to finalize the terms of the Inversion, despite the unjustifiable high cost and tax consequence for the Company's stockholders.

8. The Inversion also represents an unfair and unjustified windfall paid to Covidien stockholders at the expense of Medtronic stockholders. Covidien stockholders are receiving a massive 30% premium, on top of which Medtronic has committed to spend an additional \$10

billion in technology investments in the United States over the next 10 years that it would otherwise not incur, all to the harm of Medtronic stockholders. Covidien stockholders are thus poised to obtain a windfall cash payment, and a disproportionately large share of the post-Inversion company as result of the Individual Defendants' breach of fiduciary duties to Medtronic stockholders.

9. Reflecting the grossly unfair terms of the Inversion, Standard & Poor's ("S&P") placed a "credit watch" on its ratings for Medtronic, reflecting its expectation of a one- or two-notch downgrade if the Inversion is completed.

10. Compounding the unfairness to Medtronic stockholders, the Inversion is being presented for a stockholder vote based on incomplete information. On July 17, 2014, Medtronic filed a Form 425 with the SEC announcing that the S-4 (the "S-4" or "Registration Statement") had been filed with the SEC by New Medtronic Holdings Limited. Intended to solicit stockholder approval of the inadequate Inversion, the S-4 fails to include all material information needed to permit Medtronic stockholders to assess the fairness of the Inversion, including: the amount of the special benefits in the form of reimbursed excise tax promised to each of Medtronic's officers and directors in the Inversion; and inputs and assumptions underlying certain of the analyses prepared by Medtronic's financial advisor, Perella Weinberg Partners LP ("Perella"). As a result, Medtronic stockholders are unable to make a fully informed decision concerning the Inversion.

11. In pursuing their unlawful plan to pursue the Inversion that short changes Medtronic stockholders while providing a windfall to Covidien stockholders, each of the Defendants violated applicable law by directly breaching and/or aiding and abetting the other

Defendants' breaches of their fiduciary duties of loyalty, due care, independence, good faith and fair dealing.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over each and every defendant named herein because Medtronic conducts business in or maintains operations in Hennepin County, and the Individual Defendants, as directors of Medtronic, have sufficient minimum contacts with Minnesota so as to render the exercise of jurisdiction by the courts of Minnesota permissible under traditional notions of fair play and substantial justice.

13. Venue is proper in the Court because one or more of the Defendants either resides in or maintains executive offices in Hennepin County, a substantial portion of the transactions and wrongs complained of herein, including the Defendants' primary participation in the wrongful acts detailed herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to Medtronic occurred in Hennepin County, and the Individual Defendants have received substantial compensation in Hennepin County for doing business here and engaging in numerous activities that had an effect in Hennepin County.

### **THE PARTIES**

14. Plaintiff Lewis Merenstein currently holds shares of common stock of Medtronic and has held such shares since prior to the wrongs complained of herein.

15. Medtronic is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 710 Medtronic Parkway Minneapolis, Minnesota 55432. Medtronic manufactures and sells device-based medical therapy products. Medtronic common stock is publicly traded on the New York Stock Exchange under the symbol "MDT." Medtronic is being named herein solely as a necessary party in connection with the

equitable relief needed to prevent consummation of the Inversion the Individual Defendants agreed to in violation of their fiduciary duties to Medtronic stockholders.

16. Defendant Omar Ishrak (“Ishrak”) has been the Chairman of the Board and Chief Executive Officer (“CEO”) of Medtronic since 2011.

17. Defendant Richard H. Anderson (“Anderson”) has been a director of Medtronic since 2002. Anderson is currently the CEO of Delta Airlines Incorporated. Anderson is a member of the Company’s Compensation Committee and Chair of the Nominating and Corporate Governance Committee.

18. Defendant Scott C. Donnelly (“Donnelly”) has been a director of Medtronic since 2013. Donnelly is Chairman, President and CEO of Textron, Inc. Donnelly is a member of the Company’s Compensation Committee and Quality and Technology Committee.

19. Defendant Victor J. Dzau, MD (“Dzau”) has been a director of Medtronic since 2008. Dzau is currently the Chancellor for Health Affairs at Duke University and President and Chief Executive Officer of the Duke University Health System. Dzau is a member of the Company’s Nominating and Corporate Governance Committee and the Quality and Technology Committee.

20. Defendant Shirley Ann Jackson (“Jackson”) has been a director of Medtronic since 2002. Jackson is President of Rensselaer Polytechnic Institute. Jackson is Chair of the Company’s Audit Committee and a member of the Nominating and Corporate Governance Committee.

21. Defendant Governor Michael O. Leavitt (“Leavitt”) has been a director of Medtronic since 2011. Leavitt is the founder and Chairman of Leavitt Partners and was previously the Governor of Utah from 1993 to 2003. Leavitt is a member of the Company’s

Audit Committee, Nominating and Corporate Governance Committee and the Quality and Technology Committee.

22. Defendant James T. Lenehan (“Lenehan”) has been a director of Medtronic since 2007. Lenehan is a financial consultant. Lenehan is a member of the Company’s Finance Committee and Chair of the Quality and Technology Committee.

23. Defendant Denise M. O’Leary (“O’Leary”) has been a director of Medtronic since 2000. O’Leary is a venture capital investor. O’Leary is a member of the Company’s Compensation Committee and Finance Committee.

24. Defendant Kendall J. Powell (“Powell”) has been a director of Medtronic since 2007. Powell is Chairman and CEO of General Mills. Powell is a member of the Company’s Audit Committee, Chair of the Compensation Committee, member of the Nominating and Corporate Governance Committee.

25. Defendant Robert C. Pozen (“Pozen”) has been a director of Medtronic since 2004. Pozen is Chairman of MFS Investment Management. Pozen is a member of the Company’s Audit Committee and Chair of the Finance Committee.

26. Defendant Preetha Reddy (“Reddy”) has been a director of Medtronic since 2012. Reddy is Managing Director of Apollo Hospitals Enterprise Limited, a division of The Apollo Group. Reddy is a member of the Company’s Finance Committee and the Quality and Technology Committee.

27. Defendants Ishrak, Anderson, Donnelly, Dzau, Jackson, Leavitt, Lenehan, O’Leary, Powell, Pozen, and Reddy, comprise the Medtronic Board of Directors, and are collectively referred to herein as the “Individual Defendants” or the “Board.”

28. Covidien is incorporated in Ireland, with its principal executives offices located at 15 Hampshire Street, Mansfield, Massachusetts 02048. Covidien is a multi-national specialty pharmaceutical company that develops and markets medical devices. Covidien common stock is publicly traded on the New York Stock Exchange under the symbol "COV."

29. Defendant New Medtronic is a private limited company incorporated in Ireland that will be converted into a public company upon the completion of the Inversion.

30. Defendant New Medtronic Sub is a wholly-owned subsidiary of New Medtronic and is also a private limited company incorporated in Ireland that was created for the purpose of effectuating the Inversion.

31. Medtronic, Covidien, New Medtronic, New Medtronic Sub and the Individual Defendants are collectively the "Defendants."

### **CLASS ACTION ALLEGATIONS**

32. Plaintiff brings this action on behalf of himself and all other stockholders of the Company (except the Defendants herein and any persons, firm, trust, corporation, or other entity related to or affiliated with them and their successors in interest), who are, or will be, threatened with injury arising from Defendants' actions, as more fully described herein.

33. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. As of June 16, 2014, there were over 900 million shares of Medtronic common stock outstanding.

(b) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other



members of the Class. Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

(c) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

(d) To the extent Defendants take further steps to effectuate the Inversion, preliminary and final injunctive relief on behalf of the Class as a whole will be entirely appropriate because Defendants have acted, or refused to act, on grounds generally applicable and causing injury to the Class.

34. There are questions of law and fact that are common to the Class including, *inter alia*, the following:

(a) Whether the Individual Defendants breached their fiduciary duties with respect to Plaintiff and the other members of the Class as a result of the conduct alleged herein;

(b) Whether the process implemented and set forth by the Individual Defendants for the Inversion is fair to the members of the Class; and

(c) Whether the Covidien has aided and abetted the Individual Defendants' breaches of fiduciary duties owed to Plaintiff and the other members of the Class as a result of the conduct alleged herein; and

(d) Whether Plaintiff and the other members of the Class would be irreparably harmed if Defendants are not enjoined from effectuating the conduct described herein.

**THE MERGER IS FLAWED AND UNFAIR AND THE PRODUCT OF  
THE INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTY**

35. On June 15, 2014, Defendants announced the Inversion through which Covidien will be acquired by Medtronic, when in actuality both Covidien and Medtronic are being sold to an entirely new entity to avoid paying taxes at the United States' corporate rate. Moreover, Covidien stockholders are being paid an excessive premium by Medtronic to the detriment of Medtronic stockholders who, notwithstanding the corporate lingo to the contrary, are in reality, being acquired as well. Adding insult to injury, a further \$10 billion is being committed to the deal to lessen any governmental objection to Medtronic giving up its status as a United States company to avoid its United States tax obligations. Structured essentially as a reverse merger, Medtronic stockholders will exchange each share of Medtronic for a new share of the post-Inversion company, which will take on the Medtronic name. Covidien stockholders will receive a partial cash-out in addition to a continuing equity interest in the post-Inversion company. Each share of Covidien will be converted into \$35.19 cash and 0.956 shares of the post-Inversion company, which means that Medtronic stockholders will own roughly 70% of the combined company and Covidien stockholders will own 30% of the combined company (and get their \$35.19 per share cash component as well).

***Background of the Inversion***

36. On July 14, 2014, New Medtronic provided a proposed Registration Statement on Form S-4 to the SEC. On July 17, 2014, Medtronic filed a Form 425 with the SEC announcing that the S-4 had been filed with the SEC by New Medtronic Holdings Limited.

37. Negotiations regarding the Inversion took place during a short time frame, without any real sales process, and no hard bargaining on price.

38. José E. Almeida, President and Chief Executive Officer of Covidien, arranged an in-person meeting with Ishrak that was held on April 2, 2014 to discuss a possible business combination.

39. Throughout April and May of 2014 certain of the Individual Defendants and unnamed members of its management team met with members of Covidien's Board of Directors and management team to discuss a possible business combination.

40. On April 23, 2014, Medtronic and Covidien entered into a mutual confidentiality agreement, which included a reciprocal 15-month "standstill" provision that prevents Medtronic from pursuing a hostile takeover of Covidien.

41. At an unspecified time Medtronic retained Perella to act as its financial advisor in the Inversion.

42. On April 24, 2014 Perella met with Covidien's financial advisor, Goldman, Sachs & Co. ("Goldman"), and learned that Covidien would not consider any business combination to be a merger-of-equals, but rather a takeover of Covidien, thus signaling Covidien's desire to be paid a premium over its then-current stock price.

43. Rather than engage in a takeover of Covidien, Medtronic instead sought to skirt its corporate tax obligations and engage in a transaction that would result in Medtronic becoming a foreign entity.

44. On May 16, 2014, the Individual Defendants held an in-person meeting in Minneapolis, Minnesota, to discuss the potential transaction with Covidien.

45. On May 22, 2014, the Individual Defendants met by telephone to discuss the potential transaction with Covidien, including evaluating the financial value of Covidien both with and without the impact of anticipated synergies. The Individual Defendants also discussed

the potential access to substantially all of Covidien's cash without subjecting it to U.S. tax. The Individual Defendants discussed recent proposals for potential U.S. tax reform the fact that a potential transaction with Covidien would be taxable to Medtronic stockholders. In fact, the Individual Defendants noted that this would have an impact on its stockholders, particularly long-term stockholders who bought the stock at low prices. For themselves, however, the Board discussed the potential indemnification by the Company for taxes the Inversion would trigger for stock awarded to the Individual Defendants and other corporate insiders whose support the Individual Defendants needed to achieve. Having found a way to smooth the path for themselves (at the expense of public stockholders), the Individual Defendants chose to ignore the tax consequences to public stockholders and move full-steam ahead to complete a transaction.

46. On May 22, 2014, Almeida spoke to Ishrak to indicate that that Covidien would not be bought on the cheap. Almeida noted that Medtronic would need to offer a compelling premium to acquire Covidien especially in light of the value that should be ascribed to Covidien's Irish domicile.

47. On May 27, 2014, the Individual Defendants held a telephonic meeting wherein they again discussed recent proposals for potential U.S. tax reform and the potential impact that such proposals might have on Medtronic and agreed that a transaction that resulted in Medtronic stockholders owning 70% of the post-closing combined company, domiciled in Ireland should be proposed to Covidien.

48. On May 30, 2014, the Individual Defendants held another a telephonic meeting unanimously authorizing Ishrak to present to Covidien a non-binding proposal of \$90 per Covidien share (consisting of approximately \$32.69 per Covidien share in cash and a fixed amount of stock having a then-current value of approximately \$57.31 per share) in a transaction

in which Medtronic's stockholders would own approximately 70% of the combined company which would be domiciled in Ireland.

49. With Medtronic's bid on the table, Covidien, through its financial advisor, Goldman, responded with a counter-offer of \$95 per share on June 1, 2014.

50. On June 2, 2014, Almeida and Ishrak spoke by telephone regarding Medtronic's offer and Covidien's counter-offer and agreed to propose a transaction that valued Covidien at \$92.50 per Covidien share to their respective board of directors, thus ending the negotiations over price.

51. On June 3, 2014, the Medtronic Board held a telephonic meeting to discuss the proposed Inversion price of \$92.50 per Covidien share. The Individual Defendants formally authorized the Company to make a revised non-binding proposal to acquire Covidien for (i) \$35.19 per ordinary share in cash and (ii) 0.956 shares of the combined company per Covidien share, which, together, was valued at approximately \$92.50 per Covidien share using the 30-day volume weighted average trading price of Medtronic shares as of June 2, 2014. The proposal was made on June 3, 2014.

52. Covidien promptly agreed to accept this premium price and the companies expeditiously moved to complete the terms of the Inversion.

53. On June 15, 2014, the Individual Defendants met at the Company's headquarters in Minneapolis to consider the Inversion. At the meeting Perella provided its fairness opinion and the Individual Defendants approved the Inversion, which was executed immediately following the meeting.

54. The record speed of the approval of this Inversion was not surprising given that the Individual Defendants knew of the potential tax reform measures by Congress that would

curb tax inversions such as the Inversion, and Individual Defendants' desire to: (i) escape U.S. tax liabilities and seek refuge in Ireland, which has one of the lowest tax rates in the world; and (ii) access substantially all of Covidien's cash without subjecting it to U.S. tax.

55. Further, in an effort to ensure Covidien's consent to the Inversion terms, the Individual Defendants agreed to pay \$850 million to Covidien even if Medtronic stockholders do not vote in favor of the Inversion. Therefore, Medtronic stockholders are between a proverbial rock and a hard place – if they vote for the Inversion they will individually face a significant tax burden but if they vote against the Inversion and the Inversion is terminated the Company in which they own shares will be required to pay out \$850 million, thus devaluing their investment.

***Stockholders Will Suffer Irreparable Harm as a Result of the Tax Inversion***

56. While Company CEO Ishrak has publicly stated that the Inversion is not about lowering taxes, the terms of the Inversion Agreement demonstrate otherwise. The Merger Agreement provides that Medtronic has the right to cancel the Inversion if Congress changes the tax laws in a way that results in the post-Inversion company being considered a United States taxpayer.

57. Appendix III of the Inversion Agreement sets forth the “CONDITIONS OF THE ACQUISITION AND THE SCHEME” and states:

there shall have been no change in applicable law...or official interpretation thereof as set forth in published guidance by the IRS...[that] would cause [Medtronic] to be treated as a United States domestic corporation for United States federal income tax purposes.

58. Despite representations to the contrary, Medtronic is engaging in the Inversion for tax purposes, as demonstrated by the terms of its Inversion Agreement.

59. These types of tax inversion crackdowns have been increasing in popularity in recent months. Congress, concerned about the drain this corporate exodus could have on the

U.S. tax base, has sought to crackdown on corporations seeking to evade their U.S. taxes. In trying to get the Inversion completed before the law changes, the Individual Defendants rushed the process and paid too much for the Covidien assets to the detriment of Medtronic's stockholders.

60. United States Senator Carl Levin has introduced a bill to make tax inversions, such as this, illegal. Senator Levin commented that:

These transactions are about tax avoidance plain and simple. Our legislation would clamp down on this loophole to prevent corporations from shifting their tax burdens onto their competitors and average Americans.

Press Release, Senator Carl Levin, Senators introduce bill to clamp down on 'inversions' tax loophole (May 20, 2014) (available at: <http://www.levin.senate.gov/newsroom/press/release/senators-introduce-bill-to-clamp-down-on-inversions-tax-loophole>)

61. The proposed legislation would impose a two-year moratorium on inversions and adopt more stringent criteria for overseas mergers.

62. On July 27, 2014, U.S. Treasury Secretary Jacob Lew asked Congress to pass legislation blocking inversions in an op-ed published in the Washington Post. Jacob J. Lew, *Close the Loophole on Tax Inversions*, Washington Post, July 27, 2014, available at: [http://www.washingtonpost.com/opinions/jacob-lew-close-the-tax-loophole-on-inversions/2014/07/27/2ea50966-141d-11e4-98ee-daea85133bc9\\_story.html](http://www.washingtonpost.com/opinions/jacob-lew-close-the-tax-loophole-on-inversions/2014/07/27/2ea50966-141d-11e4-98ee-daea85133bc9_story.html). Lew noted that:

Many of these transactions have been motivated by — and even expressly justified by — the tax savings. In touting these transactions, individual firms have projected saving as much as \$1 billion per year. . . . By moving their tax homes overseas, these companies are making the decision to reduce their taxes, forcing a greater share of the responsibility of maintaining core public functions on small businesses and hardworking Americans. That includes paying for the things all of us, particularly U.S. businesses, depend on: our national defense, education, medical research, courts and vital infrastructure such as roads, bridges and airports. In addition, by allowing these transactions to continue, we run the risk of eroding our corporate tax base and undoing the progress we have made to reduce our budget deficit. *Id.*

63. President Obama has also weighed in on the debate. On July 28, 2014, *The New York Times* reported that President Obama had criticized inversions, calling the companies seeking to avoid U.S. taxes to be “corporate deserters.” Andrew Ross Sorkin, *Banks Cash in on Inversion Deals to Elude Taxes*, N.Y. Times, July 28, 2014: available at: [http://dealbook.nytimes.com/2014/07/28/banks-cash-in-on-mergers-intended-to-elude-taxes/?\\_php=true&\\_type=blogs&\\_r=0](http://dealbook.nytimes.com/2014/07/28/banks-cash-in-on-mergers-intended-to-elude-taxes/?_php=true&_type=blogs&_r=0).

64. In an attempt to keep lawmakers at bay, Medtronic has committed to investing \$10 billion in technology investments in the United States over the next 10 years. This additional significant cost is on top of the already exorbitant Inversion price tag.

65. While the lower taxes may be seen as a positive for the Company, the cost to change Medtronic’s citizenship, in the premium paid for Covidien plus the \$10 billion Medtronic has committed to spend to sway the United States’ regulators, is detrimental to Medtronic’s stockholders.

66. Boston College Law School Professor Brian JM Quinn has noted there is no fiduciary obligation to avoid paying U.S. taxes. Brian JM Quinn, *Summer of the Inversion, cont’d*, M&A Law Professor Blog: <http://lawprofessors.typepad.com/mergers/2014/07/summer-of-the-inversion-contd.html#> (July 29, 2014). Companies such as Medtronic may seek to justify the Inversion because “the inversion is the only way for US firms to access all that tax free capital they have stored overseas.” *Id.* Professor Quinn responded to that bogus justification as follows:

there is no fiduciary duty to avoid paying taxes. There simply isn’t. Now, boards may not like paying taxes...who does? But, I’ve heard more directors than I care to admit saying things like they have fiduciary duties to their shareholders to do inversions because their fiduciary duties somehow preclude them from repatriating profits sitting in Ireland. Hmm. These board members need better



lawyers. A director is not required by his fiduciary duties to pursue the most tax efficient strategies out there. *Id.*

67. Worse still the structure of the Inversion will leave stockholders with their own massive tax bill. Medtronic stockholders will be left to pay 15 to 30% in taxes on the gains on their investment. However, because Medtronic's stockholders will not be getting any cash in the Inversion, they will have to either use private funds or sell a portion of their Medtronic shares to generate the funds to pay their tax bills. In fact, the S-4 discloses that the Individual Defendants recognized the significant tax impact on the Company's stockholders, particularly the long-term Medtronic stockholders with a low basis in their shares.

68. The Individual Defendants, however, have ensured that Company insiders do not have to shoulder their own large tax bill, granting each officer and director a gross-up with respect to excise taxes that may be imposed pursuant to Section 4985 of the Tax Code (28 U.S.C. §4985), which is specifically designed to extract a special tax from corporate insiders like the Individual Defendants.

69. The Inversion will generate a Section 4985 excise tax at the capital-gains tax rate (15% in 2014) on the value of stock compensation held by the Individual Defendants and officers of the Company. Medtronic has agreed to cover any liability for its insiders related to this excise tax to ensure the Inversion would go forward without any opposition or delay. As reported by *The Minneapolis Star Tribune*, the Company admitted that the Individual Defendants agreed to cover the estimated \$68 million tax bill for themselves and other corporate insiders in order to eliminate the potential that the insiders would not support the Inversion. Lee Schafer, *Medtronic deal gives investors a big tax hit*, *The Star Tribune*, June 19, 2014, available at: <http://www.startribune.com/business/263747631.html?page=2&c=y>. The Individual Defendants

are plainly receiving a unique and disparate benefit in the Inversion that is not shared with the Company's public stockholders.

70. The Individual Defendants have reaped the benefits that the U.S. has to offer. Yet, now that they have grown the Company substantially, they seek to avoid the U.S. tax rate, while ensuring that they are not subject to the same out-of-pocket tax costs being forced upon public stockholders. The benefits of the Irish corporate tax rate to the Company do not outweigh the cost of the Inversion and the harm to its individual stockholders.

71. The Individual Defendants agreed to pay the takeover premium to Covidien stockholders in the Inversion that is unfair to Medtronic stockholders, and represents overreaching by the Individual Defendants. The \$35.19 cash and 0.956 exchange ratio represents a massive, unjustified 30% premium to Covidien shares, plus the \$10 billion commitment brings the premium to considerably more. To compound the fact that the premium is unjustifiably high, it is even more unwarranted given that Medtronic is not buying Covidien, but is itself being bought – otherwise there would be no tax avoidance, which is the sole basis for the Inversion.

72. The Inversion, valued at \$42.9 billion includes a premium that exceeds its estimated cost savings, resulting in a greater windfall for Covidien stockholders.

73. In fact, the price agreed to by the Individual Defendants, includes a double premium. Since 2009, Covidien has engaged in 10 acquisitions totaling about \$5.5 billion, acquisitions that Medtronic could have made directly. Therefore, Medtronic is paying a premium over the premium Covidien already paid to purchase these 10 companies.

74. The Inversion will also result in Medtronic holding \$18 billion in net debt as opposed to the \$2 billion in net cash it currently holds.

75. Medtronic will be significantly leveraged by the Inversion. In fact, S&P has placed a “credit watch” on its ratings for Medtronic, reflecting its expectation of a one- or two-notch downgrade when the Inversion is completed, stating that it estimates “a substantial increase in Medtronic’s adjusted net leverage, based on the impact of cash used, incremental debt, and assumption of Covidien debt.” S&P credit analyst David Kaplan also stated: “We estimate the reduction in Medtronic’s cash, combined with the Covidien debt being assumed, and the additional debt to be issued would increase Medtronic’s pro forma adjusted net leverage to about 2x-2.2x at close, from about 0.7x.”

***The S-4 is Materially Deficient***

76. Defendants here have rushed to seek stockholder approval of the Inversion before the United States implements corporate tax reform measures that would curb inversions, like the Inversion.

77. In seeking stockholder approval of the Inversion, the Individual Defendants are required to disclose all information that a reasonable stockholder would consider important in deciding how to vote. In breach of this duty, the Individual Defendants failed to provide all material information in the S-4. Were Medtronic stockholders forced to vote on the Inversion pursuant to the S-4 in its current form, they would suffer the irreparable harm of being forced to vote in the absence of complete information.

78. The Medtronic directors and officers will benefit personally in the Inversion. The S-4 is incomplete and defective in failing to provide the exact payments – or at least estimated payments as of a set date – that will be made to each of the Medtronic officers and directors in the Inversion, including the reimbursement of the excise tax under Section 4985 of the Tax Code, which is a special benefit to the Individual Defendants that is not shared by Medtronic’s

public stockholders. These benefits were undeniably key factors in the Individual Defendants' decision to pursue the Inversion. Indeed, the Individual Defendants discussed the excise tax benefit at one of its first meetings in connection with the Inversion, on May 22, 2014, before they agreed to proceed with any negotiations on the price and/or structure of potential transaction. And these excise taxes, which are estimated to be a whopping \$68 million, are to be paid by Medtronic or New Medtronic, according to the S-4, which increases the cost of the transaction and further harms stockholders.

79. The S-4 fails to disclose material information concerning Perella's *Public Trading Multiples Analysis*, including the applicable tax rates for each of the selected companies, which is particularly pertinent here in light of the fact that the tax benefits that will result with Medtronic changing its tax domicile was a key factor in the Individual Defendants' decision to approve and recommend the Inversion. Indeed, the S-4 fails to disclose any analysis from Perella as to the supposed value of achieving the lower Irish corporate tax rate.

80. The S-4 also fails to disclose material information concerning Perella's *Precedent Transaction Analysis*, including whether the transactions selected were inversion deals, similar to the transaction here. This information is important to stockholders for purposes of evaluating, among other things, the premiums paid in the precedent transactions selected by Perella, as compared to the premium paid by Medtronic in the Inversion and, ultimately, the fairness of the Inversion price.

81. Similarly, the S-4 fails to disclose material information concerning Perella's *Precedent Premiums Paid Analysis*, including if, and how many, any of selected transactions included inversion deals, and the lowered tax rates those inversions achieved. This is particularly important here because Medtronic is paying a large premium in the Inversion, and

yet only achieving a small decrease in its effective tax rate. Medtronic's effective tax rate for its 2014 fiscal year was just 17.3%, well below the 35% maximum U.S. corporate rate, such that stockholders need to be informed of the value of achieving the 12.5% Irish corporate tax rate to determine if the Inversion is worth the substantial personal tax hit that Medtronic stockholders will incur in order to achieve a modest reduction in taxes for the Company.

82. Accordingly, the Individual Defendants have breached their fiduciary duties to Medtronic stockholders by causing the Company to enter into the Inversion on terms that, while personally benefitting the Individual Defendants, are fundamentally unfair to Medtronic stockholders and represent overreaching by the Individual Defendants, and by failing to provide all material information to the Medtronic stockholders.

### **COUNT I**

#### **Claim against the Individual Defendants for Breach of Fiduciary Duty**

83. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

84. The Individual Defendants have violated their fiduciary duties owed to the public stockholders of Medtronic and have acted to put their personal interests ahead of the interests of Medtronic stockholders or acquiesced in those actions by fellow Defendants. The Individual Defendants have failed to take adequate measures to ensure that the interests of Medtronic's stockholders are properly protected.

85. By the acts, transactions, and courses of conduct alleged herein, the Individual Defendants, individually and acting as a part of a common plan, will unfairly deprive Plaintiff and other members of the Class of the true value of their Medtronic investment. Plaintiff and other members of the Class will suffer irreparable harm unless the actions of the Individual Defendants are enjoined.

86. By reason of the foregoing acts, practices, and courses of conduct, the Individual Defendants have failed to exercise loyalty, due care and diligence in the exercise of their fiduciary obligations toward Plaintiff and the other members of the Class.

87. As demonstrated by the allegations above, the Individual Defendants have, to date, failed to exercise the care required, and breached their duties of loyalty, good faith, candor and independence owed to the stockholders of Medtronic because they failed to take steps to ensure that Medtronic stockholders were properly represented in the Inversion.

88. By reason of the foregoing acts, practices and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward Plaintiff and the other members of the Class.

89. As a result of the actions of the Individual Defendants, Plaintiff and the Class will suffer irreparable injury in that they are paying a massive premium for Covidien and will lose 30% of the equity they have in the Company.

90. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the Class, all to the irreparable harm of the Class.

91. As a result of the actions of the Individual Defendants, Plaintiff and the Class have been, and will be, irreparably harmed in that they have not, and will not, receive their fair portion of the value of Medtronic's stock and businesses, and will be prevented from obtaining the real value of their equity ownership of the Company through the Inversion, or through improvements to the Inversion that can be obtained through arm's-length negotiations.

92. Unless enjoined by this Court, the Individual Defendants will continue to breach the fiduciary duties owed to Plaintiff and the Class and may consummate the Inversion to the

disadvantage of the public stockholders, without providing sufficient information to enable Medtronic public stockholders to cast informed votes on the Inversion.

93. Plaintiff and members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury which these actions threaten to inflict.

## COUNT II

### **Claim Against Covidien for Aiding and Abetting the Individual Defendants' Breaches of Fiduciary Duties**

94. Plaintiff repeats and realleges each and every allegation set forth herein.

95. The Individual Defendants breached their fiduciary duties to the Medtronic stockholders by the wrongful actions alleged herein.

96. Such breaches of fiduciary duties could not, and would not, have occurred but for the conduct of Covidien, which, therefore, aided and abetted such breaches through entering into the Inversion.

97. Covidien had knowledge that they were aiding and abetting the Individual Defendants' breaches of fiduciary duties to Medtronic stockholders.

98. Covidien rendered substantial assistance to the Individual Defendants in their breaches of their fiduciary duties to Medtronic stockholders.

99. As a result of Covidien's conduct of aiding and abetting the Individual Defendants' breaches of fiduciary duties, Plaintiff and the other members of the Class have been, and will be, damaged in that they have been, and will be, prevented from obtaining a fair price for their shares.

100. As a result of the unlawful actions of Covidien, Plaintiff and the other members of the Class will be irreparably harmed in that they will be prevented from obtaining the fair value

of their equity ownership in the Company. Unless enjoined by the Court, Covidien will continue to aid and abet the Individual Defendants' breaches of their fiduciary duties owed to Plaintiff and the members of the Class, and will aid and abet a process that inhibits the maximization of stockholder value and the disclosure of material information.

101. Plaintiff and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from immediate and irreparable injury which Defendants' actions threaten to inflict.

### **COUNT III**

#### **Claim against the Individual Defendants for Violation of Minn. Stat. § 302A.251**

102. Plaintiff repeats and realleges each and every allegation set forth herein.

103. The Individual Defendants, by reason of their conduct alleged herein, failed to adhere to the standard of conduct prescribed by Minn. Stat. § 302A.252 for directors.

### **COUNT IV**

#### **Claim against Ishrak for Violation of Minn. Stat. § 302A.361**

104. Plaintiff repeats and realleges each and every allegation set forth herein.

105. Defendant Ishrak, by reason of his conduct alleged herein, failed to adhere to the standard of conduct prescribed by Minn. Stat. § 302A.361 for officers.

### **COUNT V**

#### **Claim against Defendants for Equitable Relief pursuant to Minn. Stat. § 302A.467**

106. Plaintiff repeats and realleges each and every allegation set forth herein.

107. Based on Defendants' conduct alleged herein, Plaintiff and the class of Medtronic stockholders Plaintiff seeks to represent are entitled to equitable relief pursuant to Minn. Stat. § 302A.467.



WHEREFORE, Plaintiff prays for judgment, as follows:

- A. Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class and Plaintiff's counsel as class counsel;
- B. Preliminarily and permanently enjoining Defendants from effectuating the Inversion and such other equitable relief to which Plaintiff may be entitled pursuant to Minn. Stat. § 302A.467;
- C. Declaring any transaction under the Inversion void and ordering rescission if that transaction is consummated;
- D. Requiring disgorgement and imposing a constructive trust on all property and profits Defendants receive as a result of their wrongful conduct;
- E. Directing the Individual Defendants to adequately ensure that no conflicts of interest exist between the Individual Defendants and their fiduciary obligations or, if such conflicts exist, to ensure that all conflicts are resolved in the best interests of the Class;
- F. Awarding damages, including rescissory damages, in favor of Plaintiff and the Class against all Defendants, jointly and severally, together with interest thereon;
- G. Awarding reasonable fees, together with expenses, to Plaintiff's counsel pursuant to Minn. Stat. § 302A.467 or otherwise; and
- H. Granting such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: July 30, 2014

**LOCKRIDGE GRINDAL NAUEN, PLLP**

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