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6 Attorneys for Plaintiff  
ILLINOIS UNION INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

|    |                                      |   |                                    |
|----|--------------------------------------|---|------------------------------------|
| 10 | ILLINOIS UNION INSURANCE COMPANY, an | ) | Case No.:                          |
| 11 | Illinois corporation,                | ) |                                    |
| 12 | Plaintiff,                           | ) | <b>COMPLAINT FOR RESCISSION OF</b> |
| 13 | vs.                                  | ) | <b>INSURANCE POLICY AND</b>        |
| 14 | INTUITIVE SURGICAL, INC., a Delaware | ) | <b>DECLARATORY RELIEF</b>          |
| 15 | corporation,                         | ) |                                    |
| 16 | Defendant.                           | ) | <b>DEMAND FOR JURY TRIAL</b>       |

17 Plaintiff ILLINOIS UNION INSURANCE COMPANY (“Plaintiff”) alleges:

- 18 1. Plaintiff is an Illinois corporation with its principal place of business in Philadelphia,  
19 Pennsylvania.
- 20 2. Defendant INTUITIVE SURGICAL, INC. (“Defendant”) is a Delaware corporation  
21 with its principal place of business in Sunnyvale, Santa Clara County, California.
- 22 3. Jurisdiction. This Court has jurisdiction over the subject matter of this action pursuant  
23 to 28 U.S.C. § 1332, because Plaintiff and Defendant are citizens of different states and the amount  
24 in controversy exceeds \$75,000.00, exclusive of interest and costs.
- 25 4. Venue is proper in this Court because the Defendant is a resident of this District and a  
26 substantial part of the events or omissions giving rise to the claim occurred in this District.
- 27 5. Intradistrict Assignment. Pursuant to Local Rule 3-2(c) and (e), this action arises in  
28 the San Jose Division of this Court because a substantial part of the events or omissions which give  
rise to the claim occurred in Santa Clara County, California.

**FIRST CLAIM FOR RELIEF****(Rescission of Insurance Policy)**

1  
2  
3           6.       This is an action pursuant to California Insurance Code § 650 to rescind Life Sciences  
4 Products-Completed Operations Liability Policy No. SPL G24369298 001 (the “Policy”) issued by  
5 Plaintiff to Defendant. The Policy provides coverage for products liability claims first made against  
6 Defendant during the policy period, March 1, 2013 to March 1, 2014. The Policy provides  
7 \$15,000,000 per occurrence and aggregate limits, including defense costs, over a \$5,000,000 per  
8 occurrence and aggregate self-insured retention, including defense costs, which must be satisfied by  
9 Defendant before any coverage is provided by the Policy. Defendant can satisfy the self-insured  
10 retention by payment of defense costs as well as payment of settlements and judgments.

11           7.       Defendant is a medical equipment manufacturer. Its only product line is *da Vinci*  
12 robotic surgical systems, which are used in a number of surgical procedures, including  
13 hysterectomies and prostatectomies. The system uses robotic arms with a variety of surgical tools  
14 such as retractors and cutting devices which are controlled remotely by a surgeon to perform  
15 microsurgery which is less invasive than open surgery and typically results in shorter healing  
16 periods. As of December 31, 2012, Intuitive had installed 2,585 *da Vinci* systems worldwide,  
17 including 1,878 in the United States. Defendant estimates that over 450,000 procedures were  
18 performed using *da Vinci* systems in 2012.

19           8.       At all relevant times in connection with the application process for the Policy,  
20 Defendant was represented by an insurance broker, Woodruff-Sawyer & Co. (“Broker”), located in  
21 San Francisco, California. Pursuant to California Insurance Code section 33, Broker represented  
22 Defendant, and not Plaintiff, in the application process. Plaintiff had no direct communications,  
23 either oral or written, with Defendant during the application process.

24           9.       On January 22, 2013, Broker emailed to Plaintiff a submission for Intuitive’s products  
25 liability coverage renewal on March 1, 2013. At the time, Defendant’s primary products liability  
26 insurance was provided by Ironshore Insurance (“Ironshore”). Broker informed Plaintiff that  
27 Defendant was looking for both primary and excess insurance options for \$15,000,000 per  
28 occurrence and aggregate up to \$50,000,000, and that the expiring Ironshore primary products  
liability insurance provided \$15,000,000 per occurrence and aggregate limits over a \$3,000,000 per

1 occurrence, \$5,000,000 aggregate self-insured retention. The Broker's submission attached an  
2 application for renewal coverage on an Ironshore form, and Excel spreadsheets showing three Field  
3 Actions (notice provide to users of *da Vinci* systems of corrective action that needs to be taken) in  
4 2011 and MDR's (reports of complications or potential complications in surgeries using the *da Vinci*  
5 system) during 2012. The submission stated that loss runs would follow.

6 10. On January 30, 2013, Plaintiff sent an email to the Broker stating that Plaintiff was  
7 interested in the risk and requesting loss runs. Later that day, Broker provided Plaintiff with insurer  
8 loss runs for annual policy periods starting on March 1, 2000, through the Ironshore policies for  
9 policy periods from March 1, 2011 through March 1, 2013. The loss run for the Ironshore policy  
10 showed 9 claims during the first policy period, March 1, 2011 to March 1, 2012, and 22 claims for  
11 the second policy period commencing on March 1, 2012. The Ironshore policies provided coverage  
12 for claims first made against Defendant during each policy period, irrespective of when the surgical  
13 procedure giving rise to the claim took place. Broker subsequently provided Plaintiff with three  
14 additional claims to be added to the Ironshore loss run for the last policy period commencing March  
15 1, 2012, bringing the total reported claims to 25 during the second Ironshore policy period.

16 11. Unbeknownst to Plaintiff, commencing no later than November, 2012, Defendant  
17 through their counsel entered into tolling agreements with several claimants' attorneys which  
18 provided that applicable statutes of limitations were tolled as to claimants who had contacted  
19 claimants' attorneys based on alleged complications from use of *da Vinci* systems to perform  
20 surgeries. Each claimant was added to the tolling agreements in lists provided by claimants'  
21 attorneys to Defendant's counsel. The tolling agreements contemplated exchanges of medical  
22 information and mediation before any litigation was filed.

23 12. The existence of the tolling agreements and the number of claimants added to the  
24 tolling agreements were not disclosed to Plaintiff during the application process. The existence of  
25 the tolling agreements was first publicly disclosed by Defendant in its 10-Q Quarterly Report filed  
26 with the Securities and Exchange Commission ("SEC") on or about April 19, 2013. Defendant did  
27 not disclose the existence of the tolling agreements or the increasing number of claimants added to  
28 the tolling agreement in its 10-K Annual Report filed with the SEC on or about February 4, 2013,  
which only noted that Defendant "was aware of increasing efforts by plaintiff's attorneys to solicit  
*da Vinci* patients for product liability lawsuits against the Company. The Company cannot yet  
estimate the impact of these solicitations."

1           13. After March 1, 2013, many new claimants have been added to the tolling agreements,  
2 and mediations and settlements have taken place with some of those post-March 1 claimants.  
3 Plaintiff is informed and believes, and based thereon alleges, that Defendant asserts that Plaintiff's  
4 Policy covers all claimants added to the tolling agreement after March 1, 2013, after the applicable  
5 self-insured retention has been satisfied.

6           14. Plaintiff did not know of the existence of the tolling agreements prior to the issuance  
7 of the Policy, and had no means of learning of the existence of the tolling agreements and the  
8 increasing numbers of claimants being added to the tolling agreements because that information was  
9 known only to Defendant, Defendant's counsel, and the claimants' attorneys who were providing  
10 lists of claimants to be added to the tolling agreements directly to Defendant's counsel. Plaintiff is  
11 informed and believes, and based thereon alleges, that Defendant's national defense counsel and  
12 claimants' attorneys who were parties to the tolling agreements did not publicly disclose the  
13 existence of the tolling agreements prior to the disclosure by Defendant in its 10-Q Quarterly Report  
14 in April, 2013. Defendant is informed and believes, and based thereon alleges, that the total number  
15 of claimants added to tolling agreements has not been publicly disclosed by anyone through the  
16 present time.

17           15. The loss runs submitted by Broker to Plaintiff, including payments for those losses,  
18 were analyzed by an actuary as part of Plaintiff's underwriting process. Plaintiff used the actuarial  
19 analysis to determine both the appropriate attachment point of Plaintiff's coverage (*i.e.*, the amount  
20 of the applicable per occurrence and self-insured retention) and the appropriate premium to be  
21 charged. In particular, during the application process Broker requested quotes from Plaintiff based  
22 on a higher self-insured retentions than the expiring Ironshore policy, and the quote that was  
23 eventually accepted by Defendant increased the per occurrence self-insured retention from  
24 \$3,000,000 to \$5,000,000 while maintaining a \$5,000,000 aggregate self-insured retention.

25           16. The existence of the tolling agreements and the increasing number of claimants added  
26 to the tolling agreements were facts that would have been material to Plaintiff's underwriting process  
27 that led to the binding of coverage and issuance of the Policy. The increasing number of claimants  
28 being added to tolling agreements that would likely continue into the new policy period commencing  
March 1, 2013, was a material change in the risk, because Plaintiff was relying on the small numbers  
of claims with minimal expenses shown on loss runs provided by the Broker, while the number of  
actual claimants was much larger and was increasing rapidly. In addition, any defense costs (and

1 settlements) incurred with respect to tolling agreement claimants prior to the issuance of the Policy  
2 would have been material to the actuarial analysis.

3 17. Had Plaintiff been informed of the tolling agreements and increasing number of  
4 claimants during the application process, Plaintiff would not have proceeded with the application  
5 process and would have withdrawn any quote for the Policy provided to Broker, and the Policy  
6 would never have been issued to Defendant. Even if Plaintiff had been willing to consider providing  
7 products liability insurance to Defendant, the insurance would not have had the same attachment  
8 point or premium.

9 18. Part VI Conditions, Subsection K of the Policy states:

10 K. Representations

11 By accepting this Policy, “you” [Defendant] agree that:

12  
13 The statements in the Declarations, Application and “submission  
14 materials” for this Policy are accurate and complete;

15 Those statements are based upon representations “you” made to the  
16 “us”; and

17 This Policy has been issued in reliance upon “your” representations.

18 19. California Insurance Code §§ 330-335 provide:

19 § 330. Concealment defined

20 Neglect to communicate that which a party knows, and ought to  
21 communicate, is concealment.

22 § 331. Effect of concealment

23 Concealment, whether intentional or unintentional, entitles the injured  
24 party to rescind insurance.

25 § 332. Required disclosure

26 Each party to a contract of insurance shall communicate to the other,  
27 in good faith, all facts within his knowledge which are or which he  
28 believes to be material to the contract and as to which he makes no  
warranty, and which the other has not the means of ascertaining.

§ 333. Required inquiry

1 Neither party to a contract of insurance is bound to communicate  
2 information of the matters following, except in answer to the inquiries  
of the other:

- 3 1. those which the other knows.  
4 2. Those which, in the exercise of ordinary care, the other ought  
5 to know, and of which the party has no reason to suppose him  
6 ignorant.  
7 3. Those of which the other waives communication.  
8 4. Those which prove or tend to prove the existence of a risk  
excluded by a warranty, and which are not otherwise material.  
9 5. Those which relate to a risk excepted from insurance, and  
10 which are not otherwise material.

11 § 334. Materiality

12 Materiality is to be determined not by the event, but solely by the  
13 probable and reasonable influence of the facts upon the party to whom  
the communication is due, in forming his estimate of the disadvantages  
14 of the proposed contract, or in making his inquiries.

15 § 335. Presumed knowledge

16 Each party to a contract of insurance is bound to know:

17 (a) All the general causes which are open to his inquiry equally with  
18 that of the other, and which may affect either the political or material  
perils contemplated.

19 (b) All the general usages of trade.

20  
21 20. Defendant was required to provide information to Plaintiff to allow Plaintiff to fairly  
22 evaluate the risk and to determine whether to quote, bind and issue the Policy.

23 21. As alleged in paragraphs 9 through 15 of this Complaint, in January and February,  
24 2013, during the application and underwriting process leading to the issuance of the Policy,  
25 Defendant knew that Defendant's counsel had been entering into tolling agreements with increasing  
26 numbers of claimants who were not shown on loss runs provided to Plaintiff in connection with the  
27 application process, that the existence of such tolling agreements and the increasing number of  
28 claimants added to the tolling agreements would be a material fact to Plaintiff and its underwriters in

1 determining whether to quote, bind and issue the Policy, and that Plaintiff and its underwriters had  
2 no reason to know of these tolling agreements because the existence of tolling agreements had not  
3 been publicly disclosed by anyone.

4 22. Plaintiff issued the Policy in reliance on Defendant's disclosure of all material facts  
5 that were not publicly available and unknown to Plaintiff. The material facts that were not publicly  
6 available and unknown to Plaintiff included the existence of tolling agreements with increasing  
7 numbers of claimants. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
8 expected claimants first added to tolling agreements after March 1, 2013, would be covered by  
9 Plaintiff's Policy after satisfaction of the applicable self-insured retention, and Defendant knew or  
10 should have known that this expectation of coverage made the existence of tolling agreements and  
11 increasing numbers of claimants added to those tolling agreements would be a material fact for  
12 Plaintiff in determining whether to insure the risk.

13 23. Plaintiff also relied on the representation by Defendant in the Policy that "[t]he  
14 statements in the Declarations, Application and 'submission materials' for this Policy are accurate  
15 and complete." The Application and "submission materials" were not accurate and complete because  
16 they omitted any information on the existence of the tolling agreements and the increasing numbers  
17 of claimants being added to the tolling agreements. In particular, by offering to provide loss runs and  
18 then providing loss runs which did not include any of the claimants added to tolling agreements, the  
19 loss runs were incomplete and misleading.

20 24. Had Plaintiff known of the tolling agreements and increasing numbers of claimants  
21 being added to the tolling agreements during the application and underwriting process for the Policy,  
22 Plaintiff would not have quoted or agreed to issue the Policy or would have issued the policy on  
23 materially different terms.  
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1 25. California Insurance Code § 650 provides:

2 § 650. Time for exercising right

3 Whenever a right to rescind a contract of insurance is given to the  
4 insurer by any provision of this part such right may be exercised at any  
5 time previous to the commencement of an action on the contract. The  
6 rescission shall apply to all insureds under the contract, including  
additional insureds, unless the contract provides otherwise.

7 26. Pursuant to California Insurance Code § 331, Plaintiff is entitled to rescind the Policy  
8 based on Defendant's concealment of material facts, specifically the existence of tolling agreements  
9 starting in November, 2012, and the increasing number of claimants being added to the tolling  
10 agreements during January and February, 2013.

11 27. Based on Defendant's concealment of the existence of the tolling agreements and the  
12 increasing number of claimants added to the tolling agreements, Plaintiff is entitled to judicial  
13 rescission of the Policy. In the event rescission of the Policy is granted, Plaintiff will refund the  
14 premium paid to it in connection with the Policy to the Defendant.

15 **SECOND CLAIM FOR RELIEF**

16 **(Declaratory Relief)**

17 28. Plaintiff realleges Paragraphs 1 through 27 as though fully set forth.

18 29. There is an actual controversy between Plaintiff and Defendant with respect to  
19 coverage under the Policy for claims of claimants added to tolling agreements after the inception  
20 date of the Policy and suits filed against Defendant after the inception of the Policy.

21 30. Plaintiff is informed and believes, and based thereon alleges, that Defendant contends  
22 that there is coverage under the Policy for all claims of claimants added to tolling agreements after  
23 the inception date of the Policy and all suits filed against Defendant after the inception of the Policy  
24 after the applicable self-insured retentions have been satisfied.

25 31. Plaintiff contends that the Policy should be rescinded and that no coverage is  
26 provided by the Policy for claims of claimants added to tolling agreements after the inception date of  
27  
28



1 the Policy and all suits filed against Defendant after the inception of the Policy after the applicable  
2 self-insured retentions have been satisfied.

3 32. Defendant has not notified Plaintiff that the applicable self-insured retentions in the  
4 Policy have been satisfied as of the date of the filing of this Complaint.

5 33. Plaintiff is informed and believes, and based thereon alleges, that it is likely that the  
6 applicable self-insured retentions in the Policy will be satisfied by payment of defense costs and  
7 settlements of claims of claimants added to tolling agreements after the inception date of the Policy  
8 and suits filed against Defendant after the inception of the Policy, and that Defendant will demand  
9 that Plaintiff provide coverage for all defense costs, settlements and judgments for claims of  
10 claimants added to tolling agreements after the inception date of the Policy and all suits filed against  
11 Defendant after the inception of the Policy after satisfaction of the self-insured retention up to the  
12 applicable limits of the Policy.  
13

14 34. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaration that there is no coverage  
15 under the Policy.  
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment as follows:

19 1. On the First Claim for Relief for Rescission of Insurance Policy, for judgment  
20 granting rescission of the Policy.

21 2. On the Second Claim for Relief for Declaratory Relief, for a declaration that there is  
22 no coverage under the Policy.


23 3. For costs of suit incurred herein.  
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4. For such other and further relief as this Court may deem just and proper.

DATED: October 21, 2013

COZEN O'CONNOR

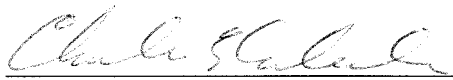
By:   
\_\_\_\_\_  
CHARLES E. WHEELER  
AMANDA M. LORENZ  
Attorneys for Plaintiff  
ILLINOIS UNION INSURANCE COMPANY

DEMAND FOR JURY TRIAL

Plaintiff ILLINOIS UNION INSURANCE COMPANY demands a trial by jury on all claims which may be tried by jury pursuant to Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: October 21, 2013

COZEN O'CONNOR

By:   
CHARLES E. WHEELER  
AMANDA M. LORENZ  
Attorneys for Plaintiff  
ILLINOIS UNION INSURANCE COMPANY

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JS 44 (Rev. 12/12) cand rev (1/15/13)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

|  |   |
|--|---|
| <p><b>I. (a) PLAINTIFFS</b><br/>ILLINOIS UNION INSURANCE COMPANY, an Illinois corporation.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Philadelphia County, PA</u><br/><i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i><br/>CHARLES E. WHEELER (SBN 82915) (619) 234-1700<br/>AMANDA LORENZ (SBN 264336)<br/>COZEN O'CONNOR, 501 W. Broadway, #1610, San Diego, CA 92101</p> | <p><b>DEFENDANTS</b><br/>INTUITIVE SURGICAL, INC., a Delaware corporation.</p> <p>County of Residence of First Listed Defendant _____<br/><i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p> |
|--|---|

|   |   |                            |   |                                       |                                       |            |            |                       |                            |                            |   |                            |                                       |                          |                            |                            |   |                                       |                            |   |                            |                            |                |                            |                            |
|---|---|----------------------------|---|---------------------------------------|---------------------------------------|------------|------------|-----------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|--------------------------|----------------------------|----------------------------|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p> | <p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> |                            | <b>PTF</b>  | <b>DEF</b>                            |                                       | <b>PTF</b> | <b>DEF</b> | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|   | <b>PTF</b>  | <b>DEF</b>                 |   | <b>PTF</b>                            | <b>DEF</b>                            |            |            |                       |                            |                            |   |                            |                                       |                          |                            |                            |   |                                       |                            |   |                            |                            |                |                            |                            |
| Citizen of This State   | <input type="checkbox"/> 1  | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |            |            |                       |                            |                            |   |                            |                                       |                          |                            |                            |   |                                       |                            |   |                            |                            |                |                            |                            |
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

|  |  |   |  |   |  |
|--|--|---|--|---|--|
| <b>CONTRACT</b>  | <b>TORTS</b>   | <b>FORFEITURE/PENALTY</b>   | <b>BANKRUPTCY</b>  | <b>OTHER STATUTES</b>   |  |
| <input checked="" type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other   | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157  | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b>   | <b>CIVIL RIGHTS</b>  | <b>PRISONER PETITIONS</b>   | <b>LABOR</b>   | <b>PROPERTY RIGHTS</b>  |  |
| <input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property   | <input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education  | <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement  | <input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark  |  |
|  |  |   | <b>IMMIGRATION</b>   | <b>SOCIAL SECURITY</b>  |  |
|  |  |   | <input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions  | <input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RS1 (405(g)) |  |
|  |  |   |  | <b>FEDERAL TAX SUITS</b>  |  |
|  |  |   |  | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609  |  |

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:  
28 U.S.C. Section 1332; 28 U.S.C. Section 2201

Brief description of cause:  
Rescission of insurance policy and declaratory relief.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 10/21/2013    SIGNATURE OF ATTORNEY OF RECORD: \_\_\_\_\_

**IX. DIVISIONAL ASSIGNMENT** *(Civil L.R. 3-2)*

*(Place an "X" in One Box Only)*     SAN FRANCISCO/OAKLAND     SAN JOSE     EUREKA

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5 alorenz@cozen.com

6 Attorneys for Plaintiff  
ILLINOIS UNION INSURANCE COMPANY

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

10  
11 ILLINOIS UNION INSURANCE COMPANY, )  
an Illinois corporation, )

12 Plaintiff, )

13 vs. )

14 INTUITIVE SURGICAL, INC., a Delaware )  
15 corporation, )

16 Defendant. )

Case No.

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

17  
18 Pursuant to Civil L.R. 3-16 and F.R. Civ. P. 7.1, the undersigned certifies that the  
19 following-listed persons, associations of persons, firms, partnerships, corporations (including  
20 parent corporations) or other entities (i) have a financial interest in the subject matter in  
21 controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject  
22 matter or in a party that could be substantially affected by the outcome of this proceeding:  
23

24 Plaintiff ILLINOIS UNION INSURANCE COMPANY is an Illinois corporation and it is  
25 an indirect, wholly-owned subsidiary of ACE Limited, a publicly-held entity. No other publicly-  
26 held entity holds more than a 10% interest in ILLINOIS UNION INSURANCE COMPANY.  
27  
28

1 DATED: October 21, 2013

COZEN O'CONNOR

2  
3 By: 

CHARLES E. WHEELER  
AMANDA M. LORENZ  
Attorneys for Plaintiff ILLINOIS UNION  
INSURANCE COMPANY

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