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 12 Los Angeles, California 90067
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 (310) 772-8317 fax

13 Attorneys for Defendant
 14 SPINAL KINETICS, INC.

15
 16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN JOSE DIVISION**

20	SYNTHES USA, LLC (f/k/a SYNTHES)	Case No. C-09-01201-RMW (PSG)
21	(U.S.A.)),)	
22	Plaintiff,)	STIPULATION AND []
23	v.)	ORDER APPROVING SUPERSEDEAS
24	SPINAL KINETICS, INC.,)	BOND
25	Defendant.)	
26	AND RELATED COUNTERCLAIMS)	
27)	

1 On April 23, 2012, the Court entered judgment in favor of Spinal Kinetics, Inc. (“Spinal
2 Kinetics”) and against Synthes USA, LLC (“Synthes”) that, *inter alia*, Spinal Kinetics’ M6 Cervical
3 and Lumbar Devices do not infringe claims 29-31 of U.S. Patent No. 7,429,270, that claims 29-31 of
4 the ’270 patent are invalid, and that Spinal Kinetics is the prevailing party and entitled to its costs of
5 suit. Dkt. 524.

6 Following post-trial motions, on October 17, 2012, Synthes timely appealed. Dkt. 580.

7 On January 9, 2013, the Court awarded costs to Spinal Kinetics in the amount of
8 \$306,980.32. Dkt. 589.

9 Synthes desires to obtain a stay of enforcement of the cost award by supersedeas bond
10 pursuant to Fed. R. Civ. P. 62(d).

11 Attached hereto as Exhibit A is a supersedeas bond issued on April 3, 2013 by the Federal
12 Insurance Company, 15 Mountain View Road, Warren, New Jersey, 07059, for the amount of the
13 cost award. Pursuant to L.R. 65.1-1(b)(1), this surety is authorized by the Secretary of the Treasury
14 of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9306. *See*
15 http://www.fms.treas.gov/c570/c570_a-z.html.

16 The parties are in agreement as to the form and terms of this supersedeas bond.
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1 Accordingly, IT IS HEREBY STIPULATED by and between the parties, through their
2 counsel, that with the Court's permission:

- 3 1. The supersedeas bond attached as Exhibit A hereto is approved; and
- 4 2. Execution of the cost award is stayed pursuant to Fed. R. Civ. P. 62(d).

5
6 Agreed to and submitted by:

SIDLEY AUSTIN LLP

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9 Dated: April 5, 2013

By: /s/ Jeffrey M. Olson
Jeffrey M. Olson
Attorneys for Plaintiff
SYNTHES USA, LLC (f/k/a SYNTHES (U.S.A.))

DICKSTEIN SHAPIRO LLP

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14 Dated: April 5, 2013

By: /s/ Robert W. Dickerson
Robert W. Dickerson
Attorneys for Defendant
SPINAL KINETICS, INC.

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21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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24 Dated: _____, 2013



Honorable Ronald M. Whyte
United States District Judge

1 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty
2 of perjury that concurrence in the filing of this document has been obtained from Robert W.
3 Dickerson.

4
5 Dated: April 5, 2013

6 By: /s/ Jeffrey M. Olson
7 Jeffrey M. Olson
8 Attorneys for Plaintiff
9 SYNTHES USA, LLC (f/k/a SYNTHES (U.S.A.))
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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SYNTHES USA, LLC (f/k/a SYNTHES (U.S.A.))

Plaintiff,

v.

SPINAL KINETICS, INC.

Defendant.

UNDERTAKING ON APPEAL FROM
JUDGMENT DIRECTING THE
PAYMENT OF MONEY

Index No. _____

WHEREAS, on the 11th day of January, 2013, in the above named Court, the above named Defendant, Spinal Kinetics, Inc., was awarded costs against the above named Plaintiff, Synthes USA, LLC, for the sum of \$306,980.32, following entry of a final judgment of non-infringement and invalidity;

AND the Appellant feeling aggrieved thereby, has appealed the final judgment to the United States Court of Appeals for the Federal Circuit;

NOW, THEREFORE, Federal Insurance Company, having an office and place of business at 15 Mountain View Road, Warren, NJ 07059,

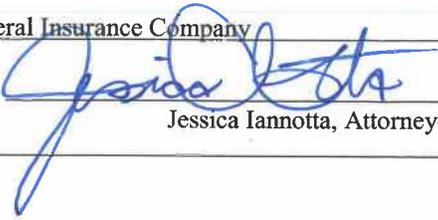
does hereby, pursuant to the Statute in such case provided, undertake that:

1. If the judgment of non-infringement or invalidity is affirmed and the time for any petition for further appellate review has run, or the appeal is dismissed, Federal Insurance Company shall pay the amount directed to be paid by the cost award; and
2. The above sum shall be paid no later than 21 days after the occurrence of one of the events in (1) above, unless Synthes USA, LLC has already satisfied the cost award by paying the above amount.

In no event shall the maximum aggregate liability of Federal Insurance Company under this Bond exceed Three Hundred Six Thousand Nine Hundred Eighty and 32/100 Dollars (\$306,980.32).

Dated: 4/3/2013

Federal Insurance Company

By: 

Jessica Iannotta, Attorney-in-Fact

SURETY ACKNOWLEDGMENT

State of New York)

County of New York)

On 3rd day of April, 2013 before me, Kelly O'Malley, Notary Public, personally appeared Jessica Iannotta who proved to me on the basis of satisfactory evidence to be the Attorney-in-Fact of Federal Insurance Company whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in her authorized capacity(ies), and that by her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.

Signature: _____


KELLY O'MALLEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01OM6267190
My Commission Expires August 13, 2016



**Chubb
Surety**

**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

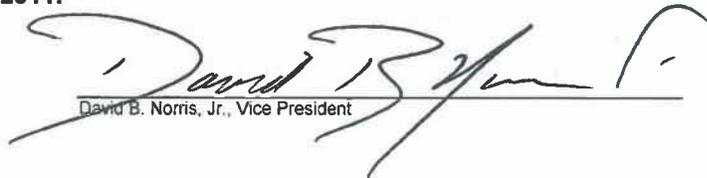
**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Vivian Carti, Debra A. Deming, Sandra Diaz, Evangelina L. Dominick, Cynthia Farrell, Jessica Iannotta, Annette Leuschner, Robert P. McDonough, Glenn Pelletiere, Sonia Rogers and Valorie Spates of New York, New York**

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **3rd** day of **November, 2011**.


Kenneth C. Wendel, Assistant Secretary


David B. Norris, Jr., Vice President

STATE OF NEW JERSEY

ss.

County of Somerset

On this **3rd** day of **November, 2011** before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



**KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 14, 2014**


Notary Public

CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this **3rd** day of **April, 2013**.




Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com

FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2011

(in thousands of dollars)

ASSETS	LIABILITIES AND SURPLUS TO POLICYHOLDERS
Cash and Short Term Investments..... \$ 151,942	Outstanding Losses and Loss Expenses..... \$ 12,300,432
United States Government, State and Municipal Bonds..... 10,312,572	Unearned Premiums..... 3,395,082
Other Bonds..... 4,146,378	Ceded Reinsurance Premiums Payable..... 320,332
Stocks..... 779,367	Provision for Reinsurance..... 80,930
Other Invested Assets..... 1,924,895	Other Liabilities..... 922,290
TOTAL INVESTMENTS..... 17,315,154	TOTAL LIABILITIES..... 17,019,066
Investments in Affiliates:	Special Surplus Funds..... 222,832
Chubb Investment Holdings, Inc..... 3,212,072	Capital Stock..... 20,980
Pacific Indemnity Company..... 2,440,763	Paid-In Surplus..... 3,106,808
Chubb Insurance Investment Holdings Ltd... 1,237,556	Unassigned Funds..... 10,356,926
Executive Risk Indemnity Inc..... 1,076,901	
CC Canada Holdings Ltd..... 747,660	
Great Northern Insurance Company..... 436,665	SURPLUS TO POLICYHOLDERS..... 13,707,546
Chubb Insurance Company of Australia Limited 404,315	
Chubb European Investment Holdings SLP.. 251,756	
Vigilant Insurance Company..... 233,604	
Other Affiliates..... 409,535	
Premiums Receivable..... 1,470,010	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS..... \$ 30,726,612
Other Assets..... 1,490,621	
TOTAL ADMITTED ASSETS..... \$ 30,726,612	

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
Investments with a carrying value of \$431,309,571 are deposited with government authorities as required by law.

State, County & City of New York, — ss:

Yvonne Baker, Assistant Secretary _____ of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2011 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2011.

Subscribed and sworn to before me
this March 31, 2012



Notary Public

DOROTHY M. BAKER
Notary Public, State of New York
No. 31-4904994
Qualified in New York County
Commission Expires Sept. 14, 2013



Assistant Secretary