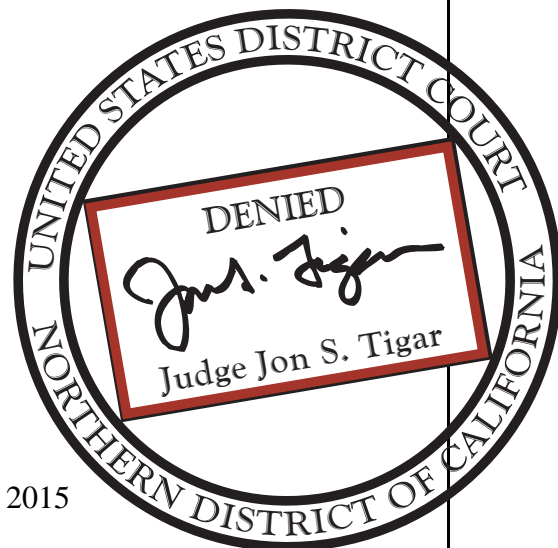


Richard H. Friedman (CA Bar No. 221622)  
 rfriedman@friedmanrubin.com  
 FRIEDMAN | RUBIN  
 51 University Street, Suite 201  
 Seattle, WA 98101  
 Ph: 206-501-4446  
 Fax: 206-623-0794

*Attorneys for Plaintiff Richard Pohly*

Dated: September 16, 2015



IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

ILLINOIS UNION INSURANCE COMPANY, an  
 Illinois corporation,

Plaintiff,

v.

INTUITIVE SURGICAL, INC., a Delaware  
 corporation,

Defendant.

Civil Action No. 3:13-CV-04863 JST

**ADMINISTRATIVE MOTION OF  
 MOVANT RICHARD POHLY TO  
 CONSIDER WHETHER CASES  
 SHOULD BE RELATED**

[N.D. Cal. Civ. L.R. 3-12, 7-11]

RICHARD POHLY,

Plaintiff,

v.

INTUITIVE SURGICAL, INC., a Delaware  
 corporation headquartered in California,

Defendant.

Civil Action No. 5:15-cv-04113-PSG

**ADMINISTRATIVE MOTION OF  
 PLAINTIFF RICHARD POHLY TO  
 CONSIDER WHETHER CASES  
 SHOULD BE RELATED**

[N.D. Cal. Civ. L.R. 3-12, 7-11]

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Pursuant to N.D. Cal. Civil Local Rules 3-12 and 7-11, Movant and Plaintiff Richard  
3 Pohly (“Pohly”) hereby files this Administrative Motion to Consider Whether Cases Should Be  
4 Related to consider whether the cases *Illinois Union Ins. Co. v. Intuitive Surgical, Inc.*, No.  
5 3:13-cv-04113-PSG (the “*Illinois Union* case”), which has already been determined to be  
6 related to *Navigators Specialty Ins. Co. v. Intuitive Surgical, Inc.*, Case No. 3:13-cv-05801 (the  
7 *Navigators* case”) should be related to the case of *Pohly v. Intuitive Surgical, Inc.*, Case No.  
8 5:15-cv-04113-JST (the “*Pohly* case”).

9 **I. ACTION REQUESTED**

10 An order pursuant to Civil Local Rule 3-12 relating the *Pohly* case and the *Illinois Union*  
11 case, which has already been found to be related to the *Navigators* case, and assigning this case  
12 to the judge currently assigned to the *Illinois Union* and *Navigators* cases.

13 **II. REASONS SUPPORTING THE REQUEST**

14 The applicable standard is contained in Civil Local Rule 3-12: “An action is related to  
15 another when (1) The actions concern substantially the same parties, property, transaction or  
16 event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and  
17 expense or conflicting results if the cases are conducted before different judges.”

18 The *Pohly* case and the *Illinois Union-Navigators* cases are related because they involve  
19 substantially the same parties and events. *See* Civ. L.R. 3-12(a)(1). If the cases are conducted  
20 before different judges, there will likely be a burdensome duplication of labor and expense. *See*  
21 Civ. L.R. 3-12(a)(2).

1 A. **Pohly and Illinois Union/Navigators Involve Substantially the Same Parties.**

2 1. **Titles and Case Numbers**

3 The *Pohly* case: *Richard Pohly v. Intuitive Surgical, Inc.*, No. 5:15-cv-04113-PSG.

4 The *Illinois Union* case: *Illinois Union Insurance Company v. Intuitive Surgical, Inc.*,  
5 No. 3:13-CV-04863 JST.

6 Intuitive Surgical, Inc., is a named defendant in both the *Pohly* case, the *Illinois Union*  
7 case (involving two different insurance companies, as described below), and the *Navigators*  
8 case. Mr. Pohly also believes Intuitive will use the same lead counsel in each of the lawsuits.  
9 Intuitive is defended by Allen Ruby of Skadden Arps in each of the insurance cases. Mr.  
10 Pohly's counsel believes Mr. Ruby will also be lead counsel in the *Pohly* case. This is because  
11 Mr. Ruby has appeared as lead counsel in two other ongoing product liability actions brought by  
12 Mr. Pohly's counsel in Washington state.<sup>1</sup> Thus, even the counsel for the parties are  
13 substantially the same.

14 B. **Pohly and Illinois Union/Navigators Involve Similar and Interrelated Fact**  
15 **Questions.**

16 Intuitive Surgical, Inc., the manufacturer of the "da Vinci" surgical robot, has been sued  
17 at least 94 times for injuries caused by product defects.<sup>2</sup> Richard Pohly is the most recent  
18 injured person to sue Intuitive, having brought suit in this District on September 9, 2015.<sup>3</sup>

19 Intuitive apparently sought indemnity from liability arising from these product liability  
20 suits from at least three different insurers, each of whom are currently in litigation with Intuitive

21  
22  
23 <sup>1</sup> The undersigned counsel makes this representation as an officer of the Court. If it is disputed,  
counsel is happy to provide a sworn declaration to this effect.

<sup>2</sup> *Pohly* case, 5:15-cv-04113-PSG, at Dkt. #1 (complaint), *id.* at ¶14 (93 other suits).

<sup>3</sup> *Id.*

1 over the indemnity obligation in front of this Court. The first suit was a declaratory action for  
2 rescission filed by Illinois Union (the *Illinois Union* case). Navigators, the second insurer,  
3 subsequently filed another declaratory action for rescission (the *Navigators* case). Intuitive then  
4 cross-complained in the *Illinois Union* case against the third insurer, Ironshore, which counter-  
5 claimed against Intuitive for declaratory relief that no obligation is owed. The *Illinois Union*  
6 and *Navigators* actions were deemed related by this Court.<sup>4</sup>

7 The insurance cases each ask the question of whether “Intuitive Surgical concealed  
8 material information relating to known claims during the application process.”<sup>5</sup> It appears,  
9 speaking generally, the insurance companies believe Intuitive was aware of numerous injury  
10 claims that it put into “tolling agreements” with the injured plaintiffs but failed to disclose those  
11 claims to the insurers. Similar issues are raised in the *Pohly* case: Mr. Pohly alleges Intuitive  
12 was aware that the defects in its robotic surgery system were causing injuries throughout the  
13 country, but that Intuitive failed to disclose these injuries to doctors, hospitals, and the FDA.  
14 Thus, each of these suits concerns what Intuitive knew about the injuries its product was  
15 causing, and when. In this way, they concern the same “events” under Local Rule 3-12(a)(1).

16 Finally, Mr. Pohly’s claim was itself placed into Intuitive’s “tolling agreement” system  
17 while the parties attempted to resolve the claim short of litigation. Thus, the *Pohly* case  
18 provides a concrete example of one of the kinds of cases that Intuitive and its insurers are  
19 litigating.

20 ///

21 ///

---

23 <sup>4</sup> *Illinois Union* case, 3:13-CV-04863 JST, at Dkt. #20.

<sup>5</sup> *Illinois Union* case at Dkt. #18 (related case motion) at 3:10-12.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

DATED: September 10, 2015

Email: [rfriedman@friedmanrubin.com](mailto:rfriedman@friedmanrubin.com)