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Press Release

## Simmons Firm Announces Settlement of Contingent Fee Antitrust Lawsuit

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EAST ALTON, Ill., May 3 /PRNewswire/ -- Simmons Browder Gianaris Angelides & Barnerd LLC of East Alton, Ill., today announced the resolution of their client Synergetics USA, Inc.'s (Nasdaq: SURG) antitrust lawsuit pending against Alcon Laboratories, Inc., and Alcon, Inc. Synergetics announced on April 27, 2010, that it had entered into a Settlement and Licensing Agreement and a Supply Agreement with Alcon, pursuant to which all litigation between the companies would be settled and Alcon would receive a license to sell certain Synergetics-patented products. Alcon will pay Synergetics \$32 million in the arrangement.

A team of lawyers from the Simmons firm represented Synergetics in the antitrust litigation. In a unique approach to commercial litigation, the firm took on the high-risk litigation under a contingency fee arrangement, whereby Synergetics would pay attorneys' fees only as a percentage of any recovery in the case. Traditionally, commercial litigation is pursued by outside counsel paid at ever-increasing hourly rates.

"High-end litigation, particularly in a field like antitrust, typically commands exorbitant hourly billing rates for lawyers," said Derek Brandt, the Simmons firm partner who spearheaded the firm's efforts in the case. "Our willingness to take the case on a contingency basis meant that a relatively small company like Synergetics could pursue a high-stakes litigation against an infinitely larger competitor. We shared the risk with our client and reached a very gratifying result." Under the contingent fee agreement, Synergetics will pay its outside counsel \$10.5 million.

Synergetics and Alcon compete in the sale of light sources and instruments and tools used in vitreoretinal surgery, a highly specialized area of ophthalmological surgery focusing on procedures in the posterior (back) portion of the eye. Surgeons use a primary piece of equipment known as a vitrectomy machine to perform vitreoretinal procedures.

Lawyers from the Simmons firm filed the antitrust lawsuit in the United States District Court for the Southern District of New York in April, 2008. The suit alleged that Alcon engaged in certain anti-competitive conduct in the market for vitreoretinal surgical equipment and supplies. Synergetics' allegations included that Alcon used the market power enjoyed by its vitrectomy machine in an unlawful manner, forcing surgeons to purchase from Alcon the ancillary instruments, tools, and external light sources used in vitreoretinal surgeries. Most notably, Synergetics alleged that Alcon unlawfully tied the sale of its fiberoptic illuminator to the sale of single-use disposable cassettes necessary to operate the Alcon vitrectomy machine.

The Simmons firm worked closely with co-counsel Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP of New York, New York. The case was *Synergetics USA, Inc. v. Alcon Laboratories, Inc. and Alcon, Inc.*, 2008-cv-3669 (DLC).

### *About Simmons Browder Gianaris Angelides & Barnerd LLC*

The Simmons firm is a leading national law firm in mesothelioma and asbestos litigation, intellectual property litigation, pharmaceutical litigation, and commercial litigation. With offices in Illinois and California, the Simmons firm's contingency-based fee structure gives businesses equal access to the legal system. For more information about the Simmons firm, visit <http://www.simmonsfirm.com>.

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