

No. 16-712

IN THE
Supreme Court of the United States

OIL STATES ENERGY SERVICES, LLC,
Petitioner,

v.

GREENE'S ENERGY GROUP, LLC, *et al.*,
Respondents.

**On Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

**BRIEF OF
AMERICA'S HEALTH INSURANCE PLANS
AS AMICUS CURIAE
IN SUPPORT OF RESPONDENTS**

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OTHER AUTHORITIES	
AHIP, <i>Where Does Your Premium Dollar Go?</i> (March 2, 2017), https://www.ahip.org/hhealth-care-dollar/	8, 9
American Intellectual Property Law Association, <i>2015 Report of the Economic Survey</i> (June 2015)	23, 24
American Intellectual Property Law Association, <i>2017 Report of the Economic Survey</i> (June 2017)	3, 23, 24
Corinne E. Atton & April M. Breyer, Biologics/HQ Fitzgerald, <i>Drug Patents May Fare Better Than Other Technologies In IPR Proceedings</i> (June 12, 2017), http://www.biologicshq.com/wp-content/uploads/2017/06/Drug-Patents-May-Fare-Better-Than-Other-Technologies-In-IPR-Proceedings.pdf	21
Courtenay C. Brinckerhoff, <i>Coherus Challenges One AbbVie Humira Patent In Four PTAB Proceedings</i> , PharmaPatents (July 18, 2017), https://www.pharmapatentsblog.com/2017/07/18/coherus-challenges-abbvie-humira-patent-in-four-ptab-proceedings/	29
Amy Brown, Evaluate Grp., <i>EP Vantage 2017 Preview</i> (Dec. 2016), available at info.evaluategroup.com/rs/607-YGS-364/images/EPV2017Prev.pdf	27

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