IN THE

Supreme Court of the United States

OIL STATES ENERGY SERVICES, LLC,

Petitioner,

υ.

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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S. Rep. No. 110-259 (2008)	14



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OTHER AUTHORITIES	
AHIP, Where Does Your Premium Dollar Go? (March 2, 2017), https://www.ahip.org/hhealth-care-dollar/	8, 9
American Intellectual Property Law Association, 2015 Report of the Economic Survey (June 2015)	23, 24
American Intellectual Property Law Association, 2017 Report of the Economic Survey (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, Coherus Challenges One AbbVie Humira Pa- tent In Four PTAB Proceedings, PharmaPatents (July 18, 2017), https://www.phar- mapatentsblog.com/2017/07/18/co- herus-challenges-abbvie-humira-pa- tent-in-four-ptab-proceedings/	29
Amy Brown, Evaluate Grp., <i>EP Vantage</i> 2017 Preview (Dec. 2016), available at info.evaluategroup.com/rs/607- YGS-364/images/EPV2017Prev.pdf	27



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