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SUMMARY OF AMICUS BRIEFS

Experts Agree: Appellate Court Should Uphold Verdict in *Innovative Health v. Biosense Webster*

In amicus curiae briefs, experts are unanimous that the J&J MedTech unit violated the law and harmed patients, hospitals, and competitors.

The May 2025 verdict in *Innovative Health, LLC v. Biosense Webster, Inc.* was a watershed moment for healthcare, consumer protection, and the Right to Repair movement. The trial exposed how the J&J MedTech unit's anticompetitive attacks on regulated "single-use" device (SUD) reprocessing inflated costs, undermined hospital choice, and risked compromising care delivery.

The court awarded AMDR-member reprocessor Innovative Health trebled damages of $442M, and issued a permanent injunction ordering Biosense to cease the challenged conduct and inform customers of the court's ruling.

Biosense appealed, asking the U.S. Court of Appeals for the Ninth Circuit to overturn the ruling. In its appeal, Biosense does not meaningfully dispute the facts about its campaign against reprocessors: cutting off clinical support, using firmware to disable reprocessed SUDs, and choking off competitors' supply. It argues instead that such behavior does not establish an antitrust violation because—according to Biosense—the company lacked market power to coerce hospitals into buying its products rather than reprocessed alternatives.[i]

But experts disagree. The following groups and individuals submitted amicus curiae briefs in support of Innovative health before the Ninth Circuit:

AMERICAN ANTITRUST INSTITUTE

American Antitrust Institute (*brief*)

Antitrust Law Professors (*brief*)

AMDR

Association of Medical Device Reprocessors (*brief*)

Congressman Neal Dunn (*brief*)

OPEN MARKETS
LIBERTY • DEMOCRACY • PROSPERITY

Open Markets Institute (*brief*)

PIRG

U.S. Public Interest Research Group (*brief*)

These leading experts in law, Congress, reprocessing, and consumer rights approach the case from different angles, but their overall perspective is consistent: they all dispute Biosense's claims, condemn the harmful impact of its actions, defend regulated SUD reprocessing, and urge the court to uphold the verdict for the sake of U.S. healthcare and fair market principles.

Making the Case to Uphold the Verdict

Cumulatively, the briefs argue that Biosense's appeal depends on narrowing antitrust law in ways the Supreme Court and Ninth Circuit have not historically accepted. In other words, established case law supports the jury's verdict. Biosense is not asking the court to correct an obvious legal mistake, but to rescue it from a well-precedented verdict after a full trial.

One brief stresses that private antitrust cases almost never reach a jury at all, and that Innovative's case survived repeated challenges before a properly instructed jury unanimously found Biosense liable.[ii] Another notes that neither the Supreme Court nor any appellate court has ever adopted Biosense's position.[iii] The briefs collectively frame overturning the verdict as both legally unsupported and practically dangerous, because it would dispense precedent to reward the use of market dominance to block lawful competition.

> *"Biosense's monopoly did not result from 'a superior product, business acumen, or historic accident.'…Its exclusionary acts—the Case Coverage Policy, the Falcon Chip, and used catheter collection practices—were mutually reinforcing and 'none . . . made Biosense's products better.' Rather, these tactics excluded products of higher quality from the market."* **~U.S. PIRG**[iv]

> *"Biosense…provides no grounds for setting aside the jury's verdict. There is no legal presumption that can shield it from the consequences of its illegal tying violation, and the jury's finding of the requisite lock-in confirms that Biosense exercised market power to inflict the injuries it caused hospitals in the aftermarkets."* **~American Antitrust Institute**[v]

> *"Biosense's view…is a mashup of lock-in and foremarket-monopoly that violates settled antitrust principles and common sense. Neither the Supreme Court nor any court of appeals has ever taken Biosense's position."* **~Antitrust Law Professors**[vi]

> *"The jury verdict in favor of Innovative rests on well-established precedent. Innovative's legal theory is entirely faithful to Supreme Court and Ninth Circuit case law…Biosense's arguments, in contrast, are contrary to both binding law and good policy."* **~Open Markets Institute**[vii]

Patients Pay the Price

Biosense's conduct harmed Innovative Health, other competitor reprocessors and hospitals—and the patients who rely on them. Taken together, the briefs argue that by blocking hospitals from using FDA-regulated reprocessed SUDs, Biosense cut off a lower-cost (and, at times, higher-quality) option that could free up resources for staff, equipment, and patient care.

Healthcare is not an ordinary market: as U.S. PIRG explains, patients cannot shop around for the best deal during a medical crisis.[viii] As such, patients are at the mercy of healthcare providers in terms of the cost of care—and, by extension, the medical device suppliers who lock said providers into using higher-cost products against their will.

At stake in this case is whether dominant medical device manufacturers can make healthcare more expensive, less resilient, and less competitive by shutting down lawful reprocessing.

> *"OEMs should not interfere with the professional judgments of physicians. Neither surgeon nor patient should have to wait for access to a machine…Nor should they be forced to rely on a device that is more expensive simply to pad someone else's bottom line when the same device is available at a lower cost…*[*If*] *OEMs are permitted to push reprocessed components out of the market, hospitals will lose access to vital resources and face higher costs that could threaten their continued operations or which they will be forced to pass along to patients."*
>
> **~Congressman Neal Dunn**[ix]

> *"When an original medical-device manufacturer acts to eliminate a lower-cost reprocessable alternative, hospitals lose the ability to procure lower-cost medical devices, patients lose the savings that flow downstream, and the public bears the environmental cost of a less circular healthcare supply chain."* **~Association of Medical Device Reprocessors**[x]

> *"It is economically logical to conclude hospitals would have wanted to purchase lower-priced and better-quality catheters from Innovative if they were not constrained by Biosense's tie."*
>
> **~American Antitrust Institute**[xi]

> *"Biosense's conduct harmed hospitals and patients as well because it excluded a lower-priced option that could have lowered health care costs and freed up capital for other uses. Reprocessing has been shown to lower prices and extends the lifespan of expensive medical devices."*
>
> **~Open Markets Institute**[xii]

> *"The decision in this case is vital to protecting the public interest in a health care sector already burdened by suppressed competition and supracompetitive pricing. The anticompetitive practices at issue…pervade the American health care industry—in a health care market already characterized by insufficient competition, the consequences of allowing such tying arrangements and reprocessing barriers to stand would be severe. Permitting such practices would make medical care increasingly inefficient, expensive, and inaccessible for ordinary Americans."* **~U.S. PIRG**[xiii]

The Big Picture—Fair Markets and the Right to Repair

This case is an important test: if courts allow dominant manufacturers use control over proprietary technology to decide who gets to compete, they risk abandoning the principles of fairness, innovation, and free markets on which our society is supposedly founded.

Some briefs connect the case to these principles through the national right to repair movement, framing it as a response to manufacturer restrictions on downstream products or services like reprocessing. Others discuss the larger crisis of concentrated power in healthcare, where hidden restrictions and captive aftermarkets can quietly raise costs.

Together, the briefs argue that affirming the verdict would send a message across the bow of the healthcare sector and beyond: companies should compete by making better products, not by cornering markets to block lawful competition and harm the public interest.

> *"When a hospital, farmer, or consumer buys equipment, that purchase does not automatically grant the original manufacturer perpetual control over the downstream markets for service, maintenance, repair, and replacement parts. Rather, consumers expect that when they buy something, they own it—and have a right to obtain aftermarket goods and services from independent competitors or even to provide those goods and services themselves. The ability to obtain aftermarket goods and services at competitive prices from independent competitors is, at its core, the right to repair. This 'you buy it, you own it' principle is deeply rooted in the American political tradition."* **~Congressman Neal Dunn**[xiv]

> *"Biosense's anticompetitive practices represent one instance of the many anticompetitive practices that pervade the health care sector. This Court must condemn Biosense's tying arrangements and reprocessing barriers to send a clear and urgent signal to the industry that such conduct will not be tolerated. It could mark an important first step toward dismantling practices that inflate cost, suppress competition, and undermine patient care."* **~U.S. PIRG**[xv]

> *"[The] United States has always been a free market where you can bargain for the highest quality service at the lowest possible price. The right to repair is an essential part of that bargain. When a monopolist can put their thumb on the scale of that bargain and take away our rights to use our property, the rest of us lose. The stakes do not get any higher than healthcare…For all the foregoing reasons, [Congressman Dunn] asks this Court to affirm the jury verdict. To ensure that care provides can deliver the best care to the most people at the lowest price they should not be denied the right to repair or reprocess their medical devices."* **~Congressman Neal Dunn**[xvi]

> *"At a time when many families are struggling to afford basic medical care, promoting healthy competition in the industry overall is critical to improving health care quality and lowering costs. Our free enterprise system is undergirded by the expectation that companies will compete by 'operating with superior service, lower costs, and improve[d] efficiency.'…As the jury properly found, Biosense's conduct ran afoul of these principles and violated our nation's antitrust laws."*
>
> **~Open Markets Institute**[xvii]

> *"Biosense's restrictions are a manifestation of a growing harmful trend. From automobiles to agricultural equipment, repair and reprocessing aftermarket restrictions stifle competition and harm consumers. While legislatures have responded with 'right to repair' reforms, courts must also condemn these practices as the antitrust violations they are, lest they become a blueprint for monopolizing aftermarkets in the health care sector and beyond."* **~U.S. PIRG**[xviii]

About the Selected Quotes

AMDR has abridged quotes for readability, and provided citations to where unabridged quotes may be found. The full amicus briefs are linked above and publicly available on PACER. Page numbers in the endnotes correspond to those of the cited PDF.

Resources Available for Hospitals

Please visit AMDR's informational webpage to learn more about the case—including what was revealed in the trial, key court documents, and resources to help hospitals recognize and report potentially anticompetitive activities and protect their reprocessing programs.

About Reprocessing

Reprocessing refers to the cleaning, testing, and repackaging of "single-use" medical devices (SUDs) that are regulated by the FDA or similar national regulatory authorities so they may be returned for reuse by hospitals and clinics. The practice applies to over 300 types of SUDs that are cleared for reprocessing by the FDA or carry a CE mark in the EU; because decades of research, oversight, and clinical practice have demonstrated reprocessed SUDs to be as safe and effective as the original device. Reprocessing occurs off-site from hospitals, at AMDR-member commercial reprocessing facilities.

Use of reprocessed SUDs is one of the most celebrated innovations in the healthcare industry because it simultaneously cuts costs, waste, and Scope 3 emissions for hospitals. Reprocessing also strengthens healthcare supply chains by keeping medical device assets closer to home, minimizing reliance on imports and conserving the critical materials used to manufacture them.

These benefits have led over a dozen countries to adopt regulatory frameworks that oversee and allow SUD reprocessing, while the most prestigious hospitals in the world embrace the practice to provide better care through smarter use of resources. Today, over 11,400 hospitals and surgical centers worldwide (including the Mayo Clinic, Cleveland Clinic, all US News & World Report "Top Hospitals," and 60 U.S. military hospitals) are advancing affordability, sustainability, and resilience in healthcare—by working with AMDR-member, regulated, commercial reprocessing companies.

About AMDR

The Association of Medical Device Reprocessors (AMDR) is the global non-profit trade association for the regulated, commercial "single-use" device (SUD) reprocessing industry. AMDR members serve over 11,400 hospitals and surgical centers in the U.S., Canada, Europe, Japan and Australia.

Founded in 1997, AMDR advocates for SUD reprocessing as an important healthcare strategy that helps hospitals and healthcare providers strengthen their supply chains while reducing costs, waste, and Scope 3 emissions. AMDR protects the interests of its members in regulation, legislation, and standard-setting.

AMDR members include Arjo ReNu, Innovative Health, Medline ReNewal, Stryker's Sustainability Solutions, Sustainable Technologies (a Cardinal Health Business), Vanguard AG, and Vein360. Having played a key role in the establishment of the reprocessing industry, AMDR continues to push the global medical technology industry, leading the way for remanufacturing to play a defining role in the evolution of new device technologies.

References

[i] Appellant's Opening Brief. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc 34.1, pp. 38–41
[ii] Brief for the American Antitrust Institute as Amicus Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 52, pp. 12-14
[iii] Brief for Antitrust Law Professors as Amici Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 53, p. 18
[iv] Brief of Amicus Curiae United States Public Interest Research Group Inc. in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 54, p. 16
[v] Brief for the American Antitrust Institute as Amicus Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 52, pp. 26-27
[vi] Brief for Antitrust Law Professors as Amici Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 53, p. 18
[vii] Brief of Open Markets Institute as Amicus Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 50, p. 8
[viii] Brief of Amicus Curiae United States Public Interest Research Group Inc. in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 54, p. 30
[ix] Brief for Congressman Neal Dunn as Amicus Curiae in Support of Appellee and Affirmance. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 68.2, pp. 14-15
[x] Brief of Amicus Curiae Association of Medical Device Reprocessors in Support of Appellee Innovative Health, LLC. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 51, p. 20
[xi] Brief for the American Antitrust Institute as Amicus Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 52, p. 16
[xii] Brief of Open Markets Institute as Amicus Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 50, p. 10
[xiii] Brief of Amicus Curiae United States Public Interest Research Group Inc. in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 54, p. 13
[xiv] Brief for Congressman Neal Dunn as Amicus Curiae in Support of Appellee and Affirmance. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 68.2, pp. 7-9
[xv] Brief of Amicus Curiae United States Public Interest Research Group Inc. in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 54, pp. 29-30
[xvi] Brief for Congressman Neal Dunn as Amicus Curiae in Support of Appellee and Affirmance. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 68.2, p. 17
[xvii] Brief of Open Markets Institute as Amicus Curiae in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 50, pp. 20-21
[xviii] Brief of Amicus Curiae United States Public Interest Research Group Inc. in Support of Plaintiff-Appellee. *Innovative Health LLC v. Biosense Webster, Inc.*, Doc. 54, p. 13