UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

CAREFIRST OF MARYLAND, INC., GROUP HOSPITALIZATION AND MEDICAL SERVICES, INC., and CAREFIRST BLUECHOICE, INC., on behalf of themselves and all others similarly situated, Plaintiffs, vs. JOHNSON & JOHNSON and JANSSEN BIOTECH, INC., Defendants.	Case No. No. 2:23-cv-00629-JKW-LRL

MOTION OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE AMERICAN TORT REFORM ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Local Civil Rule 7(a), the National Association of Manufacturers ("NAM") and The American Tort Reform Association ("ATRA") move for leave to file a brief as amici curiae, appended hereto, in support of defendants Johnson & Johnson and Janssen Biotech, Inc.'s (collectively, "J&J") Motion for Summary Judgment. In support of the instant motion, the NAM and ATRA submit their Memorandum in Support of their motion, which is incorporated herein.

WHEREFORE, the NAM and ATRA respectfully request that this Court grant their motion for leave to file their proposed amicus brief, attached hereto as Exhibit A, in support of J&J's Motion for Summary Judgment.

Dated: August 15, 2025

Respectfully submitted,

By: */s/ Robert L. Wise*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day, August 15, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification to all counsel of record.

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BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF DEFENDANTS JOHNSON & JOHNSON AND JANSSEN BIOTECH, INC.'S MOTION FOR SUMMARY JUDGMENT

CORPORATE DISCLOSURE STATEMENT

The National Association of Manufacturers ("NAM") is a nonprofit trade association. The NAM has no parent corporation, and no publicly held company has 10% greater ownership in the NAM.

The American Tort Reform Association ("ATRA") is a nonprofit, tax-exempt organization incorporated in the District of Columbia. ATRA has no parent corporation, and no publicly held company has 10% or greater ownership in ATRA.

INTEREST OF AMICUS CURIAE[1]

Amicus curiae the NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs 13 million people, contributes nearly $2.9 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Amicus curiae ATRA was founded in 1986, and consists of a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus curiae briefs in cases involving important liability issues.

[1] No party's counsel authored any part of this brief. No one, apart from the NAM, ATRA, and their counsel, contributed money intended to fund the brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an important question about the scope of antitrust liability under Section 2 of the Sherman Act, 15 U.S.C. § 2. In this action, Plaintiffs urge a novel theory: that a defendant can violate antitrust law by incidentally acquiring patents that are owned by another company, even if, at the time of their acquisition, the defendant is unaware of existing patent claims and their potential, future impact on competitive markets. In so doing, Plaintiffs ask this Court to vitiate the long-standing rule that antitrust violations must be willful and to instead adopt a rule of strict antitrust liability. Plaintiffs argue that, so long as a defendant intentionally acquires a patent, and the patent has *future impact* on competitive markets, the defendant may be liable under the Sherman Act. This unprecedented theory not only contravenes black-letter antitrust law—which requires monopolistic intent at the time of the relevant acquisition—but carries broad, adverse policy implications for innovation and growth across economic sectors. This suit is yet another attempt by the plaintiffs' bar to expand liability and punish corporations under the purported guise of consumer protection. But far from protecting consumers, imposing antitrust liability on Defendant Johnson & Johnson ("J&J") would harm consumers by stifling competition, repressing innovation, and imposing even more costs and burdensome due diligence obligations on already heavily regulated industries.

For these reasons and those discussed below, Plaintiffs' conception of Section 2 liability, premised upon J&J's acquisition of biosimilar manufacturing patents from Momenta Pharmaceuticals, Inc. ("Momenta"), should be rejected.

ARGUMENT

I. Plaintiffs urge an unprecedented theory that a defendant can violate antitrust law by incidentally acquiring patents owned by another company, even if, at the time of their acquisition, the defendant is unaware of existing patent claims and their potential, future impact on competitive markets.

Section 2 of the Sherman Act states that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person . . . to monopolize any part of the trade" is subject to certain penalties. 15 U.S.C. § 2. The elements of the offense of monopolization under Section 2 have long been settled, requiring "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966). Accordingly, to prevail on their monopolization claim, Plaintiffs must prove that J&J (1) willfully acquired or maintained monopoly power in the relevant market (2) through anticompetitive or exclusionary conduct. *Kolon Indus. Inc. v. E.I. du Pont de Nemours and Co.*, 748 F.3d 160, 173, 177 (4th Cir. 2014) ("*Kolon*"); *see also Verizon Commc'ns Inc. v. Law Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004) ("the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct*" (emphasis in original)).

Plaintiffs claim that, as a matter of law, J&J's acquisition of the Momenta biosimilar patents constitutes anticompetitive and exclusionary conduct. They are wrong. To sustain their burden of proof on the willfulness element, Plaintiffs must show that, in acquiring the Momenta biosimilar patents in 2020, J&J used its alleged monopoly power "'*to* foreclose competition, *to* gain a competitive advantage, or *to* destroy a competitor.'" *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 482–83 (1992) (internal quotation marks omitted) (emphasis added); *see also id.* ("If Kodak adopted its parts and service policies *as part of a scheme of willful*

acquisition or maintenance of monopoly power, it will have violated § 2." (emphasis added)); *accord Kolon*, 748 F.3d at 175 ("Even if Kolon had presented a triable issue on the monopoly-power element, Kolon also needed to show that DuPont willfully maintained that power. To violate this prong, a defendant must *engage in conduct 'to foreclose competition, to gain a competitive advantage, or to destroy a competitor.*'" (quoting *Kodak*, 504 U.S. at 482–83) (emphasis added)). In other words, *something more* than mere acquisition of patents must be established to impose antitrust liability on a single firm. *See Automatic Radio Mfg. Co. v. Hazeltine Res. Inc.*, 339 U.S. 827, 834 (1950) ("[M]ere accumulation of patents, no matter how many, is not in and of itself illegal."), *overruled in part on other grounds by Lear, Inc. v. Adkins*, 395 U.S. 653 (1969); *Dollac Corp. v. Margon Corp.*, 164 F. Supp. 41, 62 (D.N.J. 1958) ("The mere accumulation of these patents by the defendant, no matter how many, may not be condemned as illegal under the antitrust laws in the absence of some evidence that they were misused to unlawfully extend the patent monopoly." (citations omitted)), *aff'd*, 275 F.2d 202 (3d Cir. 1960).[2] It is this *something more* that is missing from Plaintiffs' monopolization claim, which is premised upon a theory of liability that is wholly unprecedented and discordant with black-letter antitrust law.

A. Under black-letter antitrust law, a monopolization claim requires the "willful" acquisition or maintenance of monopoly power at the time of the relevant patent acquisition.

Under longstanding Supreme Court precedent, for J&J to be found liable under Section 2 for its acquisition and assertion of the Momenta biosimilar patents, Plaintiffs must prove that the company engaged in "the *willful* acquisition or maintenance of [monopoly] power." *Kodak*, 504

[2] *See also FMC Corp. v. Manitowoc Co.*, 835 F.2d 1411, 1418 n.16 (Fed. Cir. 1987) ("Mere procurement of a patent, whatever the conduct of the applicant in the procurement, cannot *without more* affect the welfare of the consumer and cannot in itself violate the antitrust laws.") (emphasis added) (citing R. Bork, *The Antitrust Paradox* 50–51 (1978), and W. Bowman, *Patent and Antitrust Law* 1, 2–3, 14 (1973)).

U.S. at 481 (quoting *Grinnell*, 384 U.S. at 570–71) (emphasis added). Proving willfulness, in turn, requires a showing of "monopolistic intent," namely "'that a jury could find no valid business reason or concern for efficiency'" for the allegedly unlawful conduct. *Oksanen v. Page Mem'l Hosp.*, 945 F.2d 696, 710 (4th Cir. 1991) (quoting *White v. Rockingham Radiologists, Ltd.*, 820 F.2d 98 at 105 (4th Cir. 1987)).

Further, in the context of the acquisition of patents, the Second Circuit has concluded that "where a patent has been lawfully acquired, *subsequent conduct* permissible under the patent laws *cannot* trigger any liability under the antitrust laws." *SCM Corp. v. Xerox Corp.*, 645 F.2d 1195, 1206 (2d Cir. 1981) (emphasis added). Rather, "'a [§] 2 violation will have occurred where, for example, the dominant competitor in a market acquires a patent covering a substantial share of the same market that [they] *know[ ] when added to [their] existing share will afford [them] monopoly power.*'" *Id.* at 1207)) (emphasis added). And "[b]ecause the essence of a patent is the monopoly or exclusionary power it confers upon the holder, analyzing the lawfulness of the acquisition of a patent necessitates [a] primar[y] focus upon the circumstances of the acquiring party and the status of the relevant product and geographic markets ***at the time of the acquisition***.'" *Id.* (emphasis added); Opinion and Order on Defendant's Motion to Dismiss, ECF No. 119 at 29 (quoting *id.*). Amici submit that, under *SCM Corp.*, the *something more* (than mere acquisition of a patent) that could justify imposition of antitrust liability on the purchaser is monopolistic intent—in other words, *knowledge* of how the acquisition of the patents will aid the firm in acquiring or keeping monopoly power at the time of the purchase and *willful conduct* in furtherance of the monopoly.

Plaintiffs do not even attempt to satisfy this standard. Instead, Plaintiffs claim that J&J's acquisition of the Momenta patents in October 2020 was inherently anticompetitive—and thus violative of Section 2—*regardless of* whether, at the time of the acquisition, J&J harbored any

intent to maintain its alleged monopoly power in the relevant antitrust market for ustekinumab. Indeed, the crux of Plaintiffs' argument centers on their claim that J&J *willfully acquired* exclusive rights to the biosimilar patents, which cover processes for biosimilar development. (Pl's. Mem. in Supp. of Partial Mot. for Summ. J. ("MSJ"), ECF No. 443 at 21–22; *see also id.* at 22.) Plaintiffs urge that for the purposes of a Section 2 violation, "[w]illfulness requires 'mere intent to do the act.'" (*Id.* at 22 (citing *United Food & Com. Workers Loc. 1776 & Participating Emps. Health & Welfare Fund v. Takeda Pharm. Co. Ltd.*, 11 F.4th 118, 137 (2d Cir. 2021)).) As such, Plaintiffs contend that they "need not prove that [J&J] intended to do an *improper* act—just that [J&J] intended to do the act that acquired or maintained monopoly power." *Id.* (citing *Takeda Pharm. Co.*, 11 F.4th at 137–38) (emphasis in original)). This expansive conception of Section 2 liability—which relies on a single out-of-circuit case—is directly contrary to black-letter antitrust law under which, for J&J to be found liable under Section 2, Plaintiffs must prove that the company engaged in "the *willful* acquisition or maintenance of [monopoly] power," *Kodak*, 504 U.S. at 481 (quoting *Grinnell*, 384 U.S. at 570–71) (emphasis added).

Courts routinely consult dictionary definitions to interpret the term "willful." *See, e.g.*, *Kawaauhau v. Geiger*, 523 U.S. 57, 61 n.3 (1998) (defining "willful" as "voluntary" or "intentional") (quoting *Willful*, Black's Law Dictionary (5th ed. 1979)); *Mass. Bay Ins. Co. v. Vic Koenig Leasing, Inc.*, 136 F.3d 1116, 1124 (7th Cir. 1998) (defining a "willful" action as "one done *intentionally, knowingly, and purposely*, . . . as distinguished from an act done . . . inadvertently") (alterations and emphasis in original) (quoting *Willful*, Black's Law Dictionary (6th ed. 1990)). Black's Law Dictionary defines "willful" as "done wittingly or on purpose, as opposed to accidentally or casually; voluntary and intentional . . . [and] *connot[ing] blameworthiness*." *Willful*, Black's Law Dictionary (12th ed. 2024) (emphasis added). "A

voluntary act becomes willful, in law, only when it involves *conscious wrong or evil purpose on the part of the actor*, or at least inexcusable carelessness." *Id.* (emphasis added) Indeed, "[t]he term *willful* is stronger than *voluntary* or *intentional*; it is traditionally the equivalent of malicious, evil, or *corrupt*." *Id.* In short, willfulness indicates intentionality and connotates blameworthiness. Thus, when the Supreme Court interpreted Section 2 to require "the *willful* acquisition or maintenance of" monopoly power, the resultant standard distinguishes innocent accumulation of market power (not triggering antitrust liability), from the blameworthy or conscious wrongful acquisition of market power (potentially triggering antitrust liability). *Grinnell Corp.*, 384 U.S. at 570–71 (emphasis added).

It follows that, when construed in the context of a monopolization claim under Section 2, Plaintiffs must show that, in acquiring the Momenta biosimilar patents in 2020, J&J—at the very least—voluntarily, intentionally, and purposely *used its monopoly power* in the relevant market for ustekinumab *to stifle competition*. That is, for liability to attach, J&J's acquisition of the Momenta patents must constitute intentional, *wrongful* conduct, i.e., "the use of monopoly power "*to* foreclose competition, *to* gain a competitive advantage, or *to* destroy a competitor." *Kodak*, 504 U.S. at 482–83 (emphasis added) (citation omitted). The test is not, as Plaintiffs suggest, whether J&J willfully acquired Momenta's *patents*. Rather, the test is whether J&J willfully acquired or maintained its alleged *monopoly power*. *See id.* at 483 (the defendant's conduct must be "part of a scheme of willful acquisition or maintenance of *monopoly power*") (emphasis added).

Plaintiffs' conception of "willfulness" fundamentally erodes the requirement that a plaintiff prove "monopolistic intent" for liability to attach under the anticompetitive-conduct prong of Section 2. *See Oksanen*, 945 F.2d at 710. Plaintiffs functionally embrace a strict liability theory under which a defendant may be liable for an antitrust violation based solely on its acquisition of

patents or intellectual property that serve to extend the defendant's market power, even absent an intent to monopolize the relevant market. But, as one court has explained, the proper inquiry "is *not* whether the patent acquisitions actually enhanced [the defendant's] market power, but rather whether they reflect [the defendant's] *intent* to *maintain* monopoly power through *anticompetitive means*." *ABS Glob., Inc. v. Inguran, LLC*, No. 14-CV-503-WMC, 2016 WL 3963246, at *19 (W.D. Wis. July 21, 2016) (second and fourth emphases added); *see also* 2 Julian O. von Kalinowksi, *Antitrust Laws and Trade Regulation* § 7A.03 (2d ed. 2015) ("it is quite well established that, absent bad faith, an accumulation of patents by a single party is not inherently illegal"). By essentially transmuting Section 2 into a strict liability offense, Plaintiffs' interpretation of the "willfulness" requirement contravenes governing precedent requiring a showing of "monopolistic intent" for a viable monopolization claim under the Sherman Act. Under this novel theory of liability, an entity with a valid patent (and thus a limited, *legal* monopoly) covering the relevant antitrust market would be precluded from acquiring any company that possesses patents or patent applications that have some inherent relationship to that market—*even absent an intent to monopolize*. There is simply no support for this interpretation in Section 2 or governing precedent.

B. Plaintiffs' exclusionary-conduct argument relies on evidence of alleged anticompetitive effects that arose long after the October 2020 Momenta acquisition.

An additional problem with Plaintiffs' Section 2 claim is that it seeks to untether the Court's analysis of anticompetitive effects from *the time of the Momenta acquisition*—the operative time frame for assessing a defendant's knowledge and the willfulness of their conduct, *see supra*—to instead focus on evidence of alleged downstream, anticompetitive effects that post-date the Momenta acquisition by at least two years.

Evidence that an entity such as J&J acquires certain patents and subsequently elects to assert those patent rights *years after their acquisition* is insufficient to sustain a plaintiff's burden of proof, absent evidence of willfulness and monopolistic intent *at the time of the acquisition*.

To hold as a matter of law that J&J possessed the requisite "monopolistic intent" in October 2020 to render its acquisition of the Momenta biosimilar patents anticompetitive would be to deem inherently anticompetitive the conduct of any patent-holding company which, as a result of a corporate acquisition, *incidentally* acquires additional patents in the relevant market, even though the patent claims and alleged anticompetitive effects thereof were entirely unknown and unforeseeable at the time of acquisition. Amici are aware of no case law supporting Plaintiffs' novel theory, which should be rejected as contrary to any sound conception of antitrust liability under Section 2.

II. Plaintiffs' novel theory of antitrust liability would place a burden on parties to corporate transactions to conduct due diligence on every patent and patent application being acquired and their potential anticompetitive impacts years into the future.

Compelling policy considerations and real-world business operations counsel against validating Plaintiffs' novel theory of antitrust liability. Permitting Plaintiffs' flawed monopolization claim to proceed past summary judgment would, as rightly noted by J&J, place an undue and unprecedented burden on parties to corporate transactions to conduct extensive investigations into and due "diligence [on] every patent and patent application being acquired in a transaction . . . and engage in a speculative analysis regarding the potential for theoretically possible *future competitive impacts*." (Def.'s Mem. in Supp.t of MSJ, ECF No. 444 at 34 (citations omitted) (emphasis added).) That is, Plaintiffs' theory of liability for allegedly anticompetitive conduct would mandate, as a functional prerequisite to any corporate transaction, a burdensome and speculative inquiry into the *potential and unforeseen* market effects of every patent and patent

application being acquired. And still, even the most thorough and diligent inquiries still may not escape antitrust liability years in the future for anticompetitive effects that were unforeseeable at the time of acquisition. Put another way, Plaintiffs' theory of antitrust liability would require every party to a corporate transaction involving the acquisition of manufacturing patents or technologies to be clairvoyant. This interpretation of Section 2 liability has no basis in antitrust law, has never been expected or mandated by antitrust enforcement authorities, and would impose new and onerous burdens on commercial enterprise.

There are also weighty notice considerations implicated by Plaintiffs' theory. To comply with Section 2, businesses across industries need clarity as to the scope of proscribed, anticompetitive conduct. By seeking to impose liability for anticompetitive effects that were not known at the time of the patent acquisition—and absent evidence of monopolistic intent (i.e., blameworthy or wrongful conduct)—Plaintiffs urge the application of an amorphous standard that provides inadequate notice to businesses and regulators alike. If Plaintiffs' theory is validated, businesses may unknowingly and *unwilfully* be found to violate antitrust law. Such a construction of Section 2 liability implicates due process concerns. *Cf. Tingley v. Ferguson*, 47 F.4th 1055, 1089 (9th Cir. 2022) ("The operative question under the fair notice theory is whether a reasonable person would know what is prohibited by the law. The terms of a law cannot require 'wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings.'" (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 20 (2010)). Congress has enacted complex antitrust and patent regulatory schemes, but has not sanctioned Plaintiffs' novel claims. If Congress wishes to expand the scope of antitrust laws to reach the conduct at issue, it knows how to do so: amend the Sherman Act. But expanding the scope of antitrust liability under 15 U.S.C. § 2 is the sole preserve of the Legislature, *not* the Judiciary. *See United States v. Ducore*,

312 F. Supp. 3d 535, 539 (E.D. Va. 2018) ("it is the role of Congress, not the courts, to amend statutes").

Moreover, as a policy matter, antitrust liability should not attach to lawful, exclusionary conduct based purely upon "the benefit of hindsight." As courts have recognized, to hold otherwise risks undermining the "integrity of the patent system." *See SCM Corp.*, 645 F.2d at 1206 ("Where a patent in the first instance has been lawfully acquired, a patent holder ordinarily should be allowed to exercise his patent's exclusionary power even after achieving commercial success; *to allow the imposition of treble damages based on what a reviewing court might later consider, with the benefit of hindsight, to be too much success would seriously threaten the integrity of the patent system*." (emphasis added)).

Plaintiffs' theory would also undermine *procompetitive* conduct and have a chilling effect upon economic activity not only in the pharmaceutical industry, but across sectors—detrimentally affecting research and development, and stymieing innovation. As the Fourth Circuit has admonished,

> [k]eeping in mind that both antitrust and patent law are consistent with the theory that a competitive economy promotes lower prices, a court analyzing whether a particular patent-related practice unlawfully extends the limited monopoly *should hesitate to apply antitrust sanctions to prohibit the practice if the effect of such would be to discourage innovation and investment by reducing potential rewards that otherwise would accrue to the patentee*.

Int'l Wood Processors v. Power Dry, Inc., 792 F.2d 416, 427 (4th Cir. 1986) (emphasis added). By threatening to impose Section 2 liability upon corporate entities that acquire valid patents for innovative technologies, based upon alleged anticompetitive effects that were unforeseen at the time of their acquisition, Plaintiffs' conception of monopolization would undermine the shared aims of patent and antitrust law outlined above, by "discourag[ing] innovation and investment," ultimately disincentivizing manufacturers from "devot[ing] resources to innovative research and

to mak[ing] investments to develop the[ir] inventions," *id.* For these reasons, Plaintiffs' theory of anticompetitive conduct would abide the use of antitrust law to undermine, rather than promote, a competitive economy. Condoning that approach could undermine the profitability of American manufacturing based upon patented products, thereby potentially hindering the development of innovative technologies.

In short, Plaintiffs' overly broad theory of Section 2 liability is anti-business, anti-innovation, and ultimately anti-economic growth. To impose antitrust liability on J&J based upon its (merely incidental) acquisition of the Momenta patents would permit antitrust law to be wielded as a sword to stifle competition, repress innovation, and impose new obligations upon parties to corporate acquisitions to both conduct onerous and speculative due diligence on every patent or patent application acquired. This would open the floodgates of antitrust litigation by the plaintiffs' bar against companies that were parties to corporate transactions which had no deleterious effect on competition in the market at the time of the at-issue patent acquisitions. These policy implications militate against this Court validating Plaintiffs' novel understanding of anticompetitive, exclusionary conduct.

III. J&J's acquisition of Momenta in 2020 was approved by the FTC and DOJ, and Plaintiffs have provided no reason to second-guess antitrust authorities' determinations years after the fact.

Notably, J&J's acquisition of Momenta in 2020 was unconditionally approved by both the Federal Trade Commission ("FTC") and United States Department of Justice ("DOJ"), the two agencies charged with antitrust enforcement. (*See* Defs.' Mem. in Supp. of Mot. to Dismiss, ECF No. 46 at 4 (citation omitted).) This Court should not now sanction Plaintiffs' attempt to second-guess antitrust authorities' reasoned determination of the legality of a corporate acquisition *five years after the fact*.

If the FTC or DOJ had any concerns as to the legality of the transaction under relevant antitrust law, either agency had the authority to pause the deal and seek additional information—as they frequently do. *See* 15 U.S.C. § 18(a)–(c); ECF No. 46 at 4, 12. However, "[n]either agency expressed any such concerns, but rather permitted the transaction to proceed without any conditions." (*See* ECF No. 46 at 4 (citations omitted).)

To be sure, the Supreme Court has acknowledged the importance of private enforcement of antitrust laws. *Perma Life Muffles, Inc. v. Int'l Part Corp.*, 392 U.S. 134, 139 (1968), *overruled on other grounds by Copperweld Corp. v. Indep. Tube Corp.*, 461 U.S. 752 (1984). Amici do not contend that the failure of the FTC or DOJ to challenge J&J's acquisition of Momenta *per se* dooms Plaintiffs' claim under Section 2 of the Sherman Act. However, when considering (a) the doctrinal errors inherent in Plaintiffs' expansive theory of liability under Section 2, and (b) the substantial policy concerns that would attend the imposition of liability here, the fact that the Momenta acquisition went unchallenged by both the FTC and DOJ counsels strongly against permitting Plaintiffs to retroactively impose liability for conduct that the antitrust enforcement agencies deemed lawful.

Plaintiffs—and the plaintiffs' bar writ large—should not be permitted to use antitrust law as a vehicle for second-guessing the reasoned determination of federal regulators years after the fact, based upon the alleged effects of acquired patents upon market competition that were unknown at the time. While this Court need not defer to these regulatory authorities, it should follow the law and reject Plaintiffs' novel, post facto effort to impose antitrust liability in this case based upon a flawed legal standard.

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court grant summary judgment in J&J's favor on Plaintiffs' monopolization claim under 15 U.S.C. § 2.

Dated: August 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2025, I caused to be served a copy of the foregoing Brief Of Amici Curiae The National Association Of Manufacturers And The American Tort Reform Association In Support Of Defendants Johnson & Johnson And Janssen Biotech, Inc.'s Motion For Summary Judgment on all counsel of record via the Court's CM/ECF system.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
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CAREFIRST OF MARYLAND, INC., GROUP HOSPITALIZATION AND MEDICAL SERVICES, INC., and CAREFIRST BLUECHOICE, INC., on behalf of themselves and all others similarly situated, Plaintiffs, vs. JOHNSON & JOHNSON and JANSSEN BIOTECH, INC., Defendants.	Case No. No. 2:23-cv-00629-JKW-LRL

[PROPOSED] ORDER

Upon consideration of the Motion of the National Association of Manufacturers and the American Tort Reform Association for leave to file a brief as amici curiae, and good cause appearing, it is hereby

ORDERED that the motion for leave to file a brief as amici curiae is granted; it is further

ORDERED that the Clerk shall cause the brief to be filed and entered on the docket of the above-captioned matter.

IT IS SO ORDERED.

Date _____

_____
United States District Judge