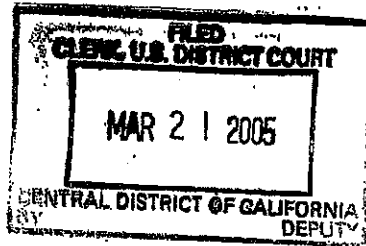


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MASIMO CORPORATION, a Delaware Corporation

Plaintiff,

vs.

TYCO HEALTH CARE GROUP, L.P.,
a Delaware Partnership, and
MALLINCKRODT, INCORPORATED,
a Delaware Corporation,

Defendants.

Case No. CV 02-4770 MRP
(AJWx)

SPECIAL VERDICT FORM

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Special Verdict Form

Keeping in mind the preceding instructions, please answer the following questions. All "yes" answers must be supported by a preponderance of the evidence. You must reach a unanimous decision on each question and each subsection of each question.

I.

Masimo's Monopolization Claim

Section 2 of the Sherman Act

Question 1: Unlawful Maintenance of Monopoly Power

Do you find that Masimo has proven that Tyco has unlawfully maintained monopoly power in the relevant market?

Answer "yes" or "no". Yes No

If your answer is "no", stop and go to Part II below.

Question 2: Injury to Masimo

Do you find that Masimo has proven that Tyco's unlawful maintenance of monopoly power caused injury to Masimo's business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to Part II below.

1 **Question 3: Masimo's Damages**

2 What amount of money do you find would fairly compensate Masimo for the
3 injury, if any, that you have found was caused by Tyco's unlawful maintenance of
4 monopoly power?

5 Answer in dollars and cents, if any. \$ -0-

7 **II.**

8 **Masimo's Unreasonable Restraint of Trade Claim**

9 **Section 1 of the Sherman Act**

10

11

12 **Question 4: Product Bundling**

13

A. Did Tyco's product bundling constitute an unreasonable restraint of
trade?

14

15 Answer "yes" or "no". Yes No

16

If you answered "no", stop and proceed to question 5.

17

B. Did product bundling injure Masimo in its business or property?

18

19 Answer "yes" or "no". Yes No

20

If you answered "no", stop and proceed to question 5.

21

C. Did product bundling cause Masimo damages and by what amount, if
any?

22

23 Answer in dollars and cents, if any. \$ -0-

24

25 **Question 5: Market Share-Based Compliance Pricing Contracts**

26

A. Did Tyco's market share-based compliance pricing contracts constitute
an unreasonable restraint of trade?

27

28 Answer "yes" or "no". Yes No

1 If you answered "no", stop and proceed to question 6.

2 B. Did market share-based contracts injure Masimo in its business or
3 property?

4 Answer "yes" or "no". Yes No

5 If you answered "no", stop and proceed to question 6.

6 C. Did market share-based contracts cause Masimo damages and by what
7 amount, if any?

8 Answer in dollars and cents, if any. \$ 57,000,000.00

9

10

Question 6: Sole-Source Contracts

11

12 A. Did Tyco's sole-source contracts constitute an unreasonable restraint of
13 trade?

14 Answer "yes" or "no". Yes No

15 If you answered "no", stop and proceed to question 7.

16 B. Did the sole-source contracts injure Masimo in its business or property?

17 Answer "yes" or "no". Yes No

18 If you answered "no", stop and proceed to question 7.

19 C. Did the sole-source contracts cause Masimo damages and by what
20 amount, if any?

21 Answer in dollars and cents, if any. \$ 57,000,000.00

22

Question 7: Co-Marketing Agreements with OEMs

24 A. Did Tyco's co-marketing agreements with OEMs constitute an
25 unreasonable restraint of trade?

26 Answer "yes" or "no". Yes No

27 If you answered "no", stop and proceed to question 8.

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B. Did the co-marketing agreements injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 8.

C. Did the co-marketing agreements cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ -0-

Question 8: Equipment Financing Programs

A. Did Tyco's equipment financing programs constitute an unreasonable restraint of trade?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 9.

B. Did the equipment financing programs injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 9.

C. Did the equipment financing programs cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ -0-

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III.

Masimo's Exclusionary Dealing Claim

Section 3 of the Clayton Act

Question 9: Product Bundling

A. Did Tyco's product bundling constitute an exclusive dealing arrangement entered into by Tyco?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 10.

B. Did product bundling injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 10.

C. Did product bundling cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ 13,000,000.00

Question 10: Market Share-Based Compliance Pricing Contracts

A. Did Tyco's market share-based compliance pricing contracts constitute an exclusive dealing arrangement entered into by Tyco?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 11.

B. Did the market share-based contracts injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 11.

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C. Did the market share-based contracts cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ -0-

Question 11: Sole-Source Contracts

A. Did Tyco's sole-source contracts constitute an exclusive dealing arrangement entered into by Tyco?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 12.

B. Did the sole-source contracts injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 12.

C. Did the sole-source contracts cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ -0-

Question 12: Co-Marketing Agreements With OEMs

A. Did Tyco's co-marketing agreements with OEMs constitute an exclusive dealing arrangement entered into by Tyco?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 13.

B. Did the co-marketing agreements injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 13.

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C. Did the co-marketing agreements cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ 13,000,000.00

Question 13: Equipment Financing Programs

A. Did Tyco's equipment financing programs constitute an exclusive dealing arrangement entered into by Tyco?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 14.

B. Did the equipment financing programs injure Masimo in its business or property?

Answer "yes" or "no". Yes No

If you answered "no", stop and proceed to question 14.

C. Did the equipment financing programs cause Masimo damages and by what amount, if any?

Answer in dollars and cents, if any. \$ -0-

Question 14: Damages Before July 2001

For the total damages figure you find, state the amount of damages that you find occurred before July 2001?

Answer in dollars and cents. \$ 140,000,000.00

SO SAY WE ALL.

3/21/05
Date

Aspicadero
PRESIDING JUROR