

# Corporate Attacks: Health

## *Case Study: Medicine Patents*

Investor-State Dispute Settlement (ISDS) grants corporations shocking powers to attack the laws we rely on for a clean environment, financial stability, affordable medicines, safe food and decent jobs. ISDS empowers multinational corporations to sue our governments before panels of three corporate lawyers. The corporate lawyers can award the corporations unlimited sums to be paid by America's taxpayers, including for the loss of expected future profits the corporations claim they would have earned if the domestic law was never enacted. The corporate lawyers' decisions are not subject to appeal and the amount they can order taxpayers to give corporations has no limit.

### **Eli Lilly v. Canada**

#### *Case Dismissed*

Indiana-based Eli Lilly, the [fifth-largest U.S. pharmaceutical corporation](#), [challenged Canada's patent standards](#) after Canadian courts invalidated the company's patents for Strattera and Zyprexa. (These drugs are used to treat attention deficit hyperactivity disorder (ADHD), schizophrenia and bipolar disorder.) Canadian federal courts applied Canada's promise utility doctrine to rule that Eli Lilly had [failed to demonstrate or soundly predict](#) that the drugs would provide the benefits that the company promised when applying for the patents' monopoly protection rights. The resulting patent invalidations paved the way for the production of less expensive, generic versions of the drugs. Eli Lilly's notice argued that Canada's entire legal basis for determining a patent's validity – that a pharmaceutical corporation should be required to verify its promises of a drug's utility in order to obtain a patent – is [“arbitrary, unfair, unjust, and discriminatory.”](#) The [company alleged](#) that Canada's legal standard violated the NAFTA guarantee of a “minimum standard of treatment” for foreign investors and resulted in a NAFTA-prohibited expropriation.

On March 16, 2017, after years of high-profile campaigning from access-to-medicines advocates, the tribunal dismissed the claim. However, the grounds on which it based its dismissal allowed the tribunal to refrain from commenting on many of the substantive issues raised in the case, meaning it avoided ruling on the merits of using the specific ISDS claims alleged in this case to attack a country's patent regime.

Instead, the tribunal focused on procedural matters unique to this filing. Namely, the tribunal noted that under NAFTA, cases must be filed within three years of an alleged “government action” that an investor claims violated its NAFTA rights.

Thus, the “alleged breach” in this case was not the previous change in Canadian patent law itself, but the Canadian courts’ enforcement of the law that resulted in Eli Lilly’s patents being invalidated. The tribunal then concluded that such court enforcement did not constitute a “dramatic change” of the law. This fancy legal footwork allowed the tribunal to avoid having to weigh in on whether Canada’s patent law violated its intellectual property obligations and whether that would have constituted a violation of the NAFTA-guaranteed minimum standard of treatment for investors or also whether the law change would constitute an expropriation of Eli Lilly’s investment.

The [tribunal ordered](#) Eli Lilly to bear the US\$750,000 cost of the arbitration (the hourly fees of the three tribunalists, venue, travel costs, etc.) as well as 75 percent of Canada’s legal fees. This means that this case that it “won” will cost Canada US\$1.2 million in tax dollars to pay its lawyers as well as the opportunity costs of those lawyers not being able to do other work for almost four years.

[www.ISDSCorporateAttacks.org](http://www.ISDSCorporateAttacks.org)