

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. The cases are decided by tribunals composed of three private attorneys, some of whom rotate between serving as “judges” and bringing cases against governments. The tribunalists are paid by the hour and are unaccountable to any court system or electorate. Under U.S. trade and investment pacts alone, corporations have already won more than \$3.6 billion in taxpayer money, with \$38 billion still pending.

Eli Lilly v. Canada

Case Pending

Eli Lilly and Company, the [fifth-largest U.S. pharmaceutical firm](#), launched a [\\$481 million claim against Canada](#) in September 2013 under the North American Free Trade Agreement (NAFTA). Eli Lilly is challenging Canada’s patent standards after Canadian courts invalidated the firm’s patents for Strattera and Zyprexa, drugs used to treat attention deficit hyperactivity disorder, schizophrenia and bipolar disorder. Canadian federal courts ruled that Eli Lilly had failed to meet the utility standard required to obtain a patent under Canadian law. Namely, the firm 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 invalidations of the patents paved the way for Canadian generic drug producers to produce less expensive versions of the drugs.

Eli Lilly is asking a NAFTA tribunal to second-guess not only the courts’ decisions, but Canada’s entire legal basis for determining a patent’s validity. Eli Lilly argues that Canada’s standard – that a patent holder is required to provide substantiation for its promises of a drug’s utility in order to obtain or maintain a patent – [is “arbitrary, unfair, unjust, and discriminatory.”](#) The [company claims](#) Canada’s legal standard violates the NAFTA guarantee of a “minimum standard of treatment” for foreign investors and resulted in a NAFTA-prohibited expropriation. A tribunal has been formed and the [first procedural order was issued in May 2014](#).