

Federal Government can purchase it, if it desires to do so. Is that not what the law is?

Mr. STAATS. I would like to ask Mr. Shnitzer, our Assistant General Counsel, to respond, if I may.

Mr. SHNITZER. Mr. Chairman, I believe that is a correct statement and I think that there have been some instances where purchases have in fact been made overseas.

Senator NELSON. Yes, We have had testimony here that we paid 12,000 percent more than the European or world price on an item that was sole source in this country. That is, it went into the AID program and the foreign country paid 12,000 percent more than the world price for the same compound.

Mr. SHNITZER. Of course, where the Federal Government purchases something which is under patent here from someone who is not a patent holder or licensee, it is subject to suit in the Court of Claims and there may be a reasonable—

Senator NELSON. If they buy it from a supplier here?

Mr. SHNITZER. If they buy it from a supplier who is not the patent holder or a licensee of the patent holder.

Senator NELSON. This was my question. If it is available in the marketplace in Europe, our Government as purchaser is not bound to buy it from the sole supplier here, is it?

Mr. SHNITZER. Yes, sir. Your position is correct. They are not bound. I am simply pointing out that in determining the difference in cost, you may have also to consider the fact that the Government may be liable to suit in the Court of Claims from the patent holder or the licensee—it would be the patent holder.

Senator NELSON. Not if the law exempts them.

Mr. SHNITZER. The U.S. Government is permitted to make the purchase under 28 U.S.C. 1498. However, the law specifically gives the right to the patent holder to bring an action in the Court of Claims against the United States for recovery of the value, let us say, of the patent.

Senator NELSON. Have there been any such suits?

Mr. SHNITZER. Yes. There have been two suits, one which was settled, the other which is still pending.

Mr. STAATS. Mr. Chairman, I have information here on the settlement of the one case which involved the Norwich Corp. as a patent holder, and the Eaton Laboratories, which is licensee. The Eaton price for 100,000 tablets—this is the drug nitrofurantoin—the Eaton price per 1,000 tablets was \$76.30. The foreign source price per 1,000 was \$18.50.

Senator NELSON. From 76—

Mr. STAATS. \$76.30 versus \$18.50. This is, of course, a very substantial difference. The settlement price in this case was \$192,500, which represents about 2 percent of that difference. So that even though there was a settlement here and a suit brought, in that particular case at least, the Government was much better off.

Senator NELSON. You mean they paid 2 percent of the difference between the \$18.50 and the \$76.30?

Mr. STAATS. It represents 2 percent of the domestic price. The settlement represents 2 percent of the domestic price. But the price