

differential between the foreign procurement and domestic procurement was almost 400 percent, you see.

Mr. GORDON. Mr. Staats, does not this really amount to compulsory licensing for governmental purposes?

Mr. SHNITZER. Yes. I think what it amounts to is a taking under eminent domain. The Government takes something. The concept was when the law was enacted, and it was enacted in 1918, that the Government should not be prevented from satisfying its needs because of the possibility of infringement of a patent.

Senator NELSON. I still do not know what the law in the case is. You say they have a right to sue.

Mr. SHNITZER. Yes.

Senator NELSON. But law was established by the case. Did they end up negotiating settlement before judgment?

Mr. SHNITZER. Yes. The parties arrived at a settlement. A consent judgment. The court did not render an opinion in the case. It simply was a settlement.

Senator NELSON. If the Government settled for 2 percent they must have had some suspicions they were not going to do too well if they went to judgments, did they not?

Mr. SHNITZER. I believe this was a reasonable conclusion.

Senator NELSON. No established law, then? No decision of any Federal circuit court?

Mr. SHNITZER. There is no decision of the Court of Claims with respect to the purchase of foreign drugs or the purchase of drugs of a foreign country.

Senator NELSON. Considering the differential, which I have seen any number of times in checking the foreign prices, would it not be advisable for the Government to be sued so that it could be settled as to what the law is rather than continuing to buy sole source here at these exorbitant prices?

Mr. SHNITZER. I should make it clear, Mr. Chairman, there have been a large number of suits. I was limiting myself to consideration of suits with respect to drugs purchased in Europe. Now, there have been a lot of others.

Senator NELSON. Have any of the suits against the Federal Government or any department gone to judgment?

Mr. SHNITZER. Yes.

Senator NELSON. And how did they come out?

Mr. SHNITZER. A large number have gone to judgment. In many instances the plaintiff—complainant was paid.

Senator NELSON. Paid what?

Mr. SHNITZER. He was paid an amount which the court determined was proper under the statute. The concept, of course, is to compensate him reasonably for the use of his patent. In terms of percentages, I have not made a complete study of this, but it looks to me as though it would not be uncommon to expect that the settlement or that the judgment would represent something around 5 or 10 percent of the purchase price.

Senator NELSON. You mean 5 or 10 percent of the differential between the price that the exclusive licensee was selling for in this country versus the price in Europe? Is that what you are saying?