

VI

It is further ordered that one year from the date this Order becomes final, annually thereafter for nine (9) years, and at such other times as the Commission or its staff may request, Respondents shall each file with the Commission a verified written report of their compliance with Paragraph V.

VII

It is further ordered that EZM shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of the Order.

Schedule A

The properties to be divested by EZM, as provided in the Agreement and Consent Order, are the following assets:

1. The manufacturing plant located at 526 North Earl Avenue, Lafayette, Indiana 47902, including all the land, all buildings and improvements on the land, and all machinery and other equipment used in the testing, formulation, production, packing, shipping, or for any other purpose relating to the barium diagnostic products business that were transferred by the December 22, 1988, acquisition agreement between EZM and Lafayette ("the premises").

2. All other assets of Lafayette transferred by the December 22, 1988, acquisition agreement, including all of Lafayette's right, title and interest in and to all corporate names, trade names, service marks, know-how, trade secrets, product formulas, and other intellectual property (including all applications relating thereto) of the Lafayette barium diagnostic products business; and all customer lists, sales and credit reports, sales literature, manuals, regulatory permits and other filings with and approvals by regulatory authorities and product formulas. The assets include all assets and rights relating to the business acquired by Lafayette from Mallinckrodt, Inc., Alcon Laboratories, Inc., C.B. Fleet Company, Incorporated and their respective subsidiaries and affiliates ("the assets").

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement containing a proposed Consent Order from E-Z-EM, Inc., and Howard S. Stern and Phillip H.

Meyers, who are officers, directors, and substantial shareholders of E-Z-EM.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The proposed complaint alleges that E-Z-EM has acquired a monopoly in the barium diagnostic products business by acquiring all of the barium business and assets of Lafayette Pharmacal, Inc. It alleges also that the relevant geographic market is the United States and that this market is highly concentrated and that entry into this market is extremely difficult. It alleges that as a result of the acquisition, competition between E-Z-EM and Lafayette Pharmacal has been eliminated and that if another firm should become a substantial competitor, the likelihood of collusion between E-Z-EM and that firm would be increased.

The proposed Agreement and Order provides that E-Z-EM must divest the Lafayette Pharmacal barium business and assets to an acquirer that must be approved in advance by the Commission and in a manner approved by the Commission. It also provides that for a period of ten years E-Z-EM may not acquire any interest in any other firm in the relevant market or sell or otherwise dispose of any interest in or assets of E-Z-EM to such a firm without prior approval from the Commission. In addition, respondents Stern and Meyers must give the Commission 30 days' notice before disposing of any of their E-Z-EM stock or share capital to any person or business engaged in the barium diagnostic products business in the United States.

The anticipated competitive effect of the proposed Order will be to restore competition in the United States market for barium diagnostic products.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

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Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of Miami Nation of Indians of State of Indiana, Inc.

July 12, 1990.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the Miami Nation of Indians of the State of Indiana, Inc., c/o Mr. Raymond O. White, Jr., P.O. Box 41, Peru, Indiana 46970, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet two of the mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

The Miami Nation of Indians of the State of Indiana is based in Peru, Indiana. It's 4,381 members are spread over most of the State of Indiana, although there are clusters of the group's population in the upper Wabash Valley counties which were the major areas of habitation of the historic Miami tribe before the removal of part of the tribe to the West in 1846.

Today's members of the Miami Nation of Indians of the State of Indiana are predominantly lineal descendants of the Miami tribe which lived in this area since the early 1700's, although when first contacted by French fur traders and missionaries the tribe's population ranged from Michigan westward across northern Indiana. Both historically and up through the present day, the petitioner has been repeatedly identified by Federal and State officials, local historians, other Indian tribes and local non-Indians as an American Indian entity.

The Miami tribe in the 1700's consisted of a series of village-based bands. There were approximately 10 such villages immediately before removal in 1846. Approximately 300 individuals either remained after removal or returned. Four groups of kinsmen had land after removal and formed subgroups which were small, land-based social and economic communities.

A combination of taxation and economic difficulties forced the Miamis off their lands beginning in the 1880's.

Most of the Meshingomesia subgroup's land was lost by 1900 and that of the other subgroups by the end of the 1920's. The breakup of the land-based communities and the migration to the nearby towns disrupted the social and economic relationships of the communities and resulted in a substantial reduction in social interaction within the tribe after 1910. An annual reunion was instituted about 1903 and subgroup differences continued to be important.

Extensive intermarriage within the Indiana Miami in the first generation after removal created intense kinship links between the subgroups. After the 1880's, however, most marriages were with local non-Indians and there were essentially no marriages within the Miami after 1907. Migration beyond the local area began after 1910 and became more substantial in the 1920's, and subgroup distinctions continued to be significant and the annual reunion continued to be held.

Approximately 38 percent of the 4,400 present-day Indiana Miami members live within the four-county area which approximates their premarital territory. There are no distinct territorial areas which are largely or exclusively Miami.

There was not sufficient data to conclusively determine the character of Miami social interaction with other Miamis in the core geographic area, with Miamis outside it, and with local non-Indians. Therefore, it could not be demonstrated that the core geographic area was also a core social area. The available data indicates that within the core geographic area there was some, but not substantial, social interaction between those Miamis not having a close kinship relationship. There are presently few close kinship ties between, as opposed to within, family lines. There are no clubs, churches or similar institutions which are exclusively or largely Miami.

The memberships outside the core geographic area did not form distinct population cluster, with the exception of those at South Bend and the western Indiana Miami (together about 19 percent of the membership). Almost all Miamis outside the area had a substantial number of relatives living within the core geographic area. This geographic distribution of kinsmen indicated that systematic communication between the core geographic area kinsmen and those outside was feasible, but the actual effectiveness of this could not be determined with the available data.

There are no cultural differences between the Miamis and the surrounding non-Indian population.

Miamis and non-Miamis in the core geographic area interact with each other extensively and in all kinds of social contexts. The limited available evidence indicates that Miamis and non-Miamis do not make significant distinctions in interacting. The limited data support a conclusion that most Miamis have some identify as Miami and the non-Indian population identifies the existence of a Miami population locally.

At least a portion of the Miami membership retains a significant degree of orientation to the subgroup differences which have characterized the Miami since removal. The annual reunion continues to be held.

The available evidence does not demonstrate that the Indiana Miami presently constitute a distinct community within which significant social interaction is maintained.

In the 1700's the Miami tribe consisted of a series of village-based bands led by distinct village chiefs. The tribe was not politically unified under a single chief until the latter part of the 18th century. By the 1760's, Pacanne was recognized as the principal chief of the entire Miami tribe. Between 1818 and 1840, J.B. Richardville was the most prominent of the Miami chiefs. Francis LaFontaine succeeded Richardville as principal chief in 1841. In the immediate pre-removal period, there were about 10 Miami villages with considerable reshuffling as the land base and the Miami population dwindled.

The removal of the 1840's effectively divided the Miami Tribe politically and socially into an eastern (Indiana) and western Miami tribe. The Indiana Miami, about 300 people, settled out into four kinship-based communities, the Godfroy, Slocum (Buddy, Richardville/LaFontaine and Meshingomesia. These were band-like communities on separate lands with distinct leaders.

Meshingomesia was dealt with as principal chief of the Indiana Miami after the death of Francis LaFontaine in 1847. There were distinct subgroup leaders such as Gabriel Godfroy, Peter Bundy, Pimyotomah and others who led the subgroups to the end of the 19th century and, in the case of Godfroy, into the 20th century. Meshingomesia was leader of his band from 1839 until he died in 1879. His grandson, William Pecong, replaced him. Francis Godfroy died in 1841 and was succeeded by his son-in-law, Black Loon. By 1860 he was succeeded by Gabriel Godfroy, one of Francis' sons. Close intermarriage between subgroups led to many kinship links between the subgroups and the leaders of the subgroups.

There is sufficient evidence to indicate that in the mid-19th to the early

20th centuries Miami leaders often acted in concert with a "council" to exert political influence over the group's members and to interact with outsiders.

From the 1840's to the 1890's, the leaders of both the Meshingomesia band and the bands based on individual reserve dealt with same major issues—who was entitled to be on the Miami roll, the 1881 payment of the principal sum due under the 1854 treaty and the taxation of Miami land. Actions for the overall tribe, such as a treaty negotiations in 1854, were generally decided in council of the several subgroup leaders.

A combination of taxation and economic difficulties forced the Miamis off their lands beginning in the 1880's. Most of the Meshingomesia subgroup's land was lost by 1900 and that of the other subgroups by the end of the 1920's. An 1897 Interior Department opinion that the tribe was not entitled to a Federal relationship overturned Miami court victories supporting the tax-free status of Miami lands and led to a renewal of taxation and the ultimate loss of the remaining Miami lands.

The era beginning in 1890 was a transition period, with some of the older leaders still active and younger leaders and new forms of organization emerging. Sometime in the years immediately around 1900, the Miamis created a formal organization directed at the critical issue of protecting the land and regaining recognized tribal status as well as the pursuit of additional claims.

The annual reunion, which evidently began in 1903, served at times up to around 1930 as a forum for discussing issues such as tribal status, hunting and fishing rights and claims. Apparently because of the factionalism, however, the business council function did not continue into the 1930's at the reunions.

The organization created shortly before the turn of the century continued to function as late as the late 1920's. However, beginning about 1917 and increasingly in the 1920's, the relationships between the subgroups developed into sharp factionalism, dividing over the issue of the best approach to seeking restoration of tribal status. Based in part on preexisting subgroup distinctions, with the added differences in the historic legal status of their lands, the Godfroys on the one hand and the Meshingomesias on the other formed competing organizations around 1930.

The Meshingomesia organization initially pursued restoration of tribal status and claims as its primary purpose. In 1937, it was incorporated as the "Miami Nation of Indians of

Indiana" and was also involved in Indian school and cemetery land issues and hunting and fishing rights. The organization became inactive in the early 1940's, although there is some limited information that informal activities on claims were carried out in the 1950's.

The organization of the Godfroy descendants was less active than the Miami Nation between its formation around 1930 and 1943, when it organized formally. Its leaders wrote to the Federal Government, asserting "wardship" status and protesting that the efforts of the Miami Nation to be restored did not represent the Godfroys.

Both organizations supported protests against State attempt to regulate and limit Miami hunting and fishing throughout the 1930's. This was an issue of widespread importance among the membership because many members continued to utilize hunting and fishing resources in the local area for subsistence throughout the 1930's.

Although the objectives of the Miami leaders and organizations between 1900 and the early 1940's were somewhat limited, i.e., focused on specific issues, these issues were of major importance to the Miami community. Tribal status and the related taxability of the land and its consequent loss forced the Miamis to make a radical change in their community structure and economy. Fishing and hunting rights appears to have been a significant issue for a major portion of the population. The leaders appear to have had a significant following, at least with regard to these issues, and there were still close kinship ties within the population.

Overall, there appears to be sufficient evidence of leaders with a significant following, although a limited political role, issues of significance to a broad spectrum of the tribal membership, and significant underlying social connections to conclude that the Miamis continued to have tribal political processes between the 1890's and the early 1940's.

Between the early 1940's and 1979, the available evidence indicates there were only limited political processes and a narrow range of activities. Although there was some continuity of organization with earlier periods, the level and scope of activity was much reduced. For all of the period, what activities were evident were almost entirely limited to pursuit of claims and enrollment of members in connection with those claims. The annual reunion continued to include members of all of the factions, but is not known to have served any direct political functions. There was no strong evidence that the organizations, or those claiming tribal

leadership in this period, had broad support among a tribal membership which was by now much more widely dispersed geographically than in previous decades and whose kinship ties with each other were now more diffuse. There is also no strong evidence that these leaders had influence beyond these immediate issues or conducted other activities as leaders.

The most recent era of Miami organization began in approximately 1979, with the Miami efforts to petition for Federal acknowledgment. A unified organization involving all of the subgroups was created. This has developed rapidly, taking on a variety of functions in addition to Federal acknowledgment.

It was not possible to determine the breadth of interest, support and involvement in council actions by the Miami membership as a whole. That membership is now widely dispersed, no longer shares close kinship ties between family lines and it was not demonstrated that significant social contact is maintained within it. Thus, there has not been demonstrated significant social ties and contact from which to infer the existence of tribal political processes which more broadly encompass the membership than can be established on the basis of the direct evidence presently available.

Tribal political processes involving leaders with a broad following on issues of significance to the overall Miami membership have not existed within the Indiana Miami since the early 1940's.

The group's governing document describes how membership is determined and how the group governs its affairs and its members. Current membership criteria state that an individual must prove their lineage to any of several specified Federal lists and payrolls of Indiana Miamis created between 1846 and 1895. The specified Federal lists and payrolls are determined to be valid listings of accepted members of the Indiana portion of the historical Miami tribe. Ninety-eight percent of the group's 4,361 members claim descent from at least one Indiana Miami ancestor on the 1895 roll or the smaller 1889 roll; 75 percent claim two or more such ancestors. The petitioner's membership criteria also provide for the use of Federal census records (1840-1910) as proof of Indiana Miami heritage; however, these records are determined not to have the same validity as the Federal lists and payrolls have as evidence of "Indiana" Miami heritage. Ninety-eight percent of the members claim to trace to at least one ancestor on the 1895 or 1889 rolls. Eighty-six percent have documented

their ancestry to the satisfaction of the Secretary in order to share in one or more of three judgments awarded by the Indian Claims Commission (1966, 1972) and the U.S. Court of Claims (1982) to Indiana Miamis.

Less than 1 percent of the membership could be identified as members of recognized tribes in Oklahoma, Kansas and Missouri. No evidence was found that the Miami Nation of Indians of the State of Indiana, or its members, have been the subject of Federal legislation which has expressly terminated or forbidden a relationship with the United States.

Based on this preliminary factual determination, we conclude that the Miami Nation of Indians of the State of Indiana, Inc., meets criteria a, d, e, f, and g, but does not meet criteria b and c of § 83.7 of the Acknowledgment regulations (25 CFR part 83).

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120-days from the date of publication of this notice.

Under § 83.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision will be available to the petitioner and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, NW., Washington, DC 20240. Attention: Branch of Acknowledgment and Research, Mail Stop 4627-MIB.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary will publish the final determination regarding the petitioner's status in the Federal Register as provided in § 83.9(h).

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

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Public Hearing on Fiscal Year 1989 Plan for Services to Indian Infants and Toddlers With Handicaps and Their Families

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public hearings and comment period.