

Companies line up to sue TGA

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Companies affected by the 2003 recall of Pan-manufactured products and the subsequent collapse of the company are already talking up plans to sue the Therapeutic Goods Administration (TGA) for compensation in the wake of last week's payout to Pan founder Jim Selim.

As first reported by *Pharma in Focus* on August 8, Mr Selim and the TGA had agreed on a settlement of his civil compensation case during the last fortnight. That settlement was brought to the court and made public last Thursday and included a judgment against the regulator.

Mr Selim had alleged negligence and misfeasance by the TGA, claiming it was motivated by "malice . . . vengeance and vendetta" arising from a failed prosecution against his company in the late 1990s. The TGA agreed to pay \$50 million in compensation plus \$5 million in costs.

Because of the judgment, the door has been opened to other companies and individuals damaged by the recall of Pan-manufactured products to seek compensation from the regulator.

Evidence given by senior TGA executive, Rita Maclachlan, revealed the TGA had decided on the recall - which affected thousands of products - before completing a review of the danger they posed, and had acted despite knowing that three out of six scientists working on the review believed there was no imminent risk of death, serious illness or injury from the products.

Already some of the biggest companies that lost money, including Sigma and Primary Health Care, have said they are examining whether it is in their interest to sue but many small businesses that suffered losses or even had to close down, and individual Pan shareholders, may now be in a position to seek compensation. Reports of a planned class action emerged over the weekend.

Pan's shares, around half of which were owned by investors other than Mr Selim, were valued at \$260 million before the collapse. In addition, the shortfall in money owed to Pan creditors stands at around \$128 million according to the company's liquidator.

But the overall losses were put much higher by Mr Selim's lawyer, Andrew Thorpe, who said they totalled around \$750 million.

The TGA has responded to the judgment by saying "The settlement involves a judgement for the claimant, but does not involve the Commonwealth conceding any of the specific allegations in the proceedings."

Meantime the government has reacted to the decision by ruling out any further enquiry into the regulator. Parliamentary Secretary for Health, Senator Jan McLucas, who is responsible for the TGA, said there had been several reviews since Mr Selim's case began and there were no plans for further inquiries.

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