

**PAN CLASS ACTION TO BE LAUNCHED, IMF AGREES TO FUNDING**

A class action on behalf of those who suffered loss in relation to the collapse of Pan Pharmaceuticals Limited (Pan) in April 2003 is to be launched in the Federal Court.

The class action will be commenced against the Commonwealth of Australia arising from the actions of the Therapeutic Goods Administration (TGA) against Pan and will be brought on behalf of certain shareholders, customers and creditors of Pan.

McLachlan Thorpe Partners, solicitors to Mr Jim Selim, former managing director of Pan, will act for applicants in the proceedings

Funding for the action is to be provided by IMF (Australia) Ltd, Australia's largest litigation funder and the first to be listed on the Australian Securities Exchange.

While the amount of the claim will depend on the amount of damages suffered by those that choose to join the action, it has the potential to be in excess of \$200 million.

The claim alleges "misfeasance in public office" in connection with the actions of the TGA which led to the withdrawal of Pan's manufacturing licence and the consequential closure of its business in April 2003.

The action is against the Commonwealth of Australia and officers and former officers of the TGA, Rita McLachlan, Pio Cesarin, Noel Fraser, Terry Slater and Robert Tribe ("the respondents").

An action against the Commonwealth by Mr Jim Selim was settled in August 2008 with Mr Selim being awarded \$50 million in damages and \$5 million in costs.

The settlement of this case made Australian legal history in being the first judgment with the consent of the Commonwealth in the area of "misfeasance in public office" and which involved such a large payout to a private individual.

IMF has agreed to fund the action because it considers the claims fall into an exceptional category due to:

- the Selim case being settled following evidence being led that the respondents knowingly and recklessly broke the law and knew that their actions were likely to cause damage to Pan, its shareholders, customers and other creditors; and
- the size and severity of the losses sustained by these groups

According to Mr John Walker, Managing Director of IMF, the class action was already supported by claimants who had suffered millions of dollars of losses but there was always room for more.

“The grounds of the claim are already strong but the action will have a greater impact as it grows in size and numbers of claimants.” Mr Walker said.

In 2003, when the TGA suspended Pan’s licence, Pan held significant market share of the complementary medicines market in Australia.

The TGA recalled all of Pan’s products manufactured within 12 months of the recall, totalling more than 1,600 products, and also contacted 35 countries to which Pan products were exported to suggest government authorities in those countries also recall Pan’s products.

The Pan recall was the largest recall ever undertaken by the TGA and had a severe and lasting impact on the complementary medicines market in Australia and Australian export markets for these products.

When Pan closed, it wiped out the company’s \$350 million market capitalisation and put 300 people out of work.

Claimants who suffered losses from the actions of the TGA may wish to contact IMF over the next four to six weeks to sign up to the class action.

According to Mr Andrew Thorpe of McLachlan Thorpe Partners, there had been no alternative to launching the class action since the government has ignored requests to launch an inquiry into the Pan matter.

“The win by Mr Selim has opened the door for other people to follow in his footsteps and has paved the way for this class action,” Mr Thorpe said.

A consultant to the class action is Ms Val Johanson, who was head of surveillance at the TGA from 1991 to 1995 and was executive director, Complementary Healthcare Council Australia, from 1997 to 2004.

According to Ms Johanson, who has been in contact with many businesses which suffered from the Pan collapse, there was not only anger amongst these victims but also a loss of confidence in the regulator.

“For the government body which regulates the pharmaceutical industry not to be held in high regard is a situation that just has to be rectified and I’m hopeful the class action will bring this about, and end what seems to be a culture of victimisation,” Ms Johanson said.

Any potential claimants who wish to participate in the class action should contact Mr Tim McLernon at IMF on 1800 016 464.

IMF, which listed on the ASX in 2001, underwrites litigation in which the total claim is in excess of \$2 million and among current cases are those against Centro Properties, Challenger, Opes Prime, Westpoint and AWB.

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**NOTE TO EDITORS :**

**There are two people who have suffered loss as a result of the collapse of Pan prepared to discuss their circumstances and basis for claim with the media. To make contact with them, please call either Val Johanson or Ian Westbrook**