

TGA class action now certain

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The race to mount a class action against the TGA on behalf of individuals and business affected by the Pan recall is well and truly under way with a number of plaintiff lawyers said to be chasing the potentially lucrative prize.

Lawyer for Pan founder Jim Selim, Andrew Thorpe of McLachlan Thorpe last week told *Pharma in Focus* that the commencement of a class action against the TGA over the 2003 Pan recall is "a matter of when, not if".

Although Mr Thorpe could not say precisely when the action would begin or the amount of damages that would be sought, he said there was no doubt a case would be filed. "We have been talking to people and people have been talking to us," he said.

He added that media reports that a case would be difficult to win because the TGA had not made any admissions were "misconceived".

"Mr Selim alleged six gross abuses of power. The TGA withdrew its defence and agreed to judgment. They said to Selim, you're right. What we don't have is findings," Mr Thorpe said.

None-the-less, he said the TGA was "stuck with the evidence and the judgment".

He said he was aware of other legal firms chasing potential class action suits but insisted McLachlan Thorpe was best placed to mount the action because it had conducted the original case and would not need to "re-invent the wheel".

Industry sources said that at least one major national firm was looking to run an action while industry consultant and former Complementary Healthcare Council Executive Director, Val Johanson, said she had been contacted by around 100 potential litigants whose claims were in the \$1 million to \$30 million range.

Action is also expected from New Zealand companies affected by the recall that was instituted across the Tasman in the wake of Australia's recall.

In a savage attack on the Australian regulator, former head of the NZ Natural Products Association, Ron Law, said, "The Australian TGA has claimed for years that it is a world class regulator. Now we know that they are drug cheats of the worst kind; a regulator unfit to regulate."

"Industry sources suggest that claims by the rest of the Australian and New Zealand natural and traditional healthcare product industry will reach over \$100 million in further payouts with New Zealand companies preparing claims against the Australian and New Zealand governments for in excess of \$30 million," Mr Law said.

Estimates of damages that might be sought in an Australian action have gone as high as \$500 million with some businesses claiming multi-million dollar losses arising from the recall. **Nick Lush**