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Research that matters.

TITLE: The Elixir of Corporate Compensation

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What kind of precedent does the Federal Government's payout of damages to Pan Pharmaceuticals set for public compensation of corporate loss?

In 2003, 19 people were hospitalised after taking medications manufactured by Pan Pharmaceuticals. The regulatory agency for medical drugs and devices, the Therapeutic Goods Administration (TGA), investigated and alleged serious safety concerns including falsified records, incorrect dosage and contaminants. Products were recalled, the factory shut down and everybody cheered; here was a seemingly prompt and appropriate response from the regulatory body responsible for safety.

For the 300 workers suddenly out of a job this must have been devastating, likewise for Pan's creditors and business associates. For the rest of us it was merely annoying as we had to look elsewhere for our supplements. Trawling through less familiar brands we were compensated by the conviction that the system worked and that action had been taken with our best interests at heart.

As well as apparently protecting consumer health, the Pan closure provided a welcome sign that complementary medicine - and the extent of its reach in the community - was being taken seriously. These actions also served as a wake-up call to other manufacturers of complementary medications to pull up their socks and deliver on improved consumer safety.

How is it that now, five years later, the TGA must pay \$55 million to Pan founder, Jim Selim, as compensation for destroying his business? Selim's supporters have labelled the TGA vindictive and the compensation well-deserved

But wasn't the TGA just doing its job?

Selim alleged that the TGA had pursued a vendetta against him and had abused the power of public office in its suspension of Pan's licence in 2003; he successfully won damages in the Federal Court in mid-August 2008. I wonder how much of the \$55 million will be seen by the 300 people made jobless, or by the 19 people who got sick? Apparently in its decision to suspend the licence, the TGA overstepped the recommendations of an expert advisory committee who had previously found that the company posed no imminent risk and thus did not satisfy the criteria for suspension.

Other than a statement that they will not overturn their allegations against Pan, there has been no public response from the TGA.

Last week it was revealed in *The Australian* that more than a hundred other companies and shareholder groups are considering a class action against the Federal Government in pursuit of damages arising from the Pan suspension. Obviously not all of these parties are purveyors of alternative medicine. Indeed, the Pan decision may trigger an avalanche of claims from big business — or anyone with grounds to claim that a poorly administered government decision has cost them.

As both a consumer and a population health researcher, I find this prospect utterly alarming. If a government authority takes action that is in the public interest and costs a company, then so be it. That's the burden of responsibility and the price of being in business. But post-Pan, if action is taken against a business for allegedly dangerous practices, there is a real risk that government will have to bail them out. Where does the burden of responsibility now lie?

One can already hear Australia's energy industry barking even more loudly at the compensatory door as they seek massive amounts for expected cost increases arising from an emissions trading scheme.

We need the TGA, and other government regulatory bodies, to keep their teeth. We also need them to behave respectably and transparently. The TGA must now come clean about what went on behind the scenes in the Pan case if it has a chance of regaining authority.