



STRENGTHENING GOVERNANCE AND ACCOUNTABILITY

Office of the Pension Funds Adjudicator

PENSION LAWYERS
ASSOCIATION

AGENDA

- ❖ Context
- ❖ Notable cases
- ❖ 2013 - Priorities

CONTEXT

- ❖ National Development Plan
- ❖ Treating Customers Fairly (TCF)

NOTABLE CASES

- ❖ Employer Duties
- ❖ Fund Communication
- ❖ Application of Section 37C
- ❖ Duty of care by fund and administrators
- ❖ Application of Section 37D(1)(b)(ii)
- ❖ Retirement Annuities

EMPLOYER DUTIES

Malatji v Gauteng Building Industry Fund & Others

- ❖ The employer requested employees to indicate whether or not they wish to join the fund
- ❖ Deceased joined two months before death
- ❖ Widow paid fund value
- ❖ Sectoral determination 2: Civil Engineering sector
- ❖ Employer participated in the fund; bound by rules
- ❖ Income Tax Act definition of pension fund
- ❖ Employer held liable for the death benefit

FUND COMMUNICATION

❖ Investments

- When will funds be disinvested into cash
- Interim and final bonus declarations
- Delay in the declaration of a final bonus
- Funds must always invest where they told members they are going to
- Always work on the latest information (valuations)
- Never give uninformed advice

❖ Delay in finalising section 14 transfers

APPLICATION OF SECTION 37C

Stenkamp & Others v SAB Staff Pension Fund & Others

- ❖ Deceased had four major children, an ex-wife (sole nominated beneficiary) and a partner
- ❖ Trustees awarded the entire benefit of R3 366 707.06 to the partner as the only dependant
- ❖ Trustee decision set aside:
 - Determine dependency, all classes
 - Definition of a dependant b(iii)
 - Extent of such dependency

DUTY OF CARE BY FUND AND ADMINISTRATOR

Mariti v Multikor Pension Fund & Another

- ❖ The complainant was overpaid by R353 605.46 for a retirement benefit
- ❖ Complainant transferred to respondent in Aug 2005
- ❖ Retired in June 2008 at aged 53 and informed of overpayment in June 2010
- ❖ Administrator failed to carry out its duties in terms of sections 7C and 7D
- ❖ Complainant's benefit expectation was reasonable
- ❖ Complainant will suffer loss if ordered to repay
- ❖ Fund must claim overpayment from administrator

APPLICATION OF SECTION 37D(1)(b)(ii)

Coka & Another v Old Mutual Superfund & Others

- ❖ Complainants were dismissed from service
- ❖ Cosawu sued employer on the complainants' behalf
- ❖ Cosawu withdrew the matter, settled and undertook to pay R77 000 in wasted costs for employer
- ❖ Employer sought to recover costs from fund
- ❖ An employer may recover legal costs against benefits of members, such costs must be related to recovery of financial damage owing to dishonesty, theft, fraud or misconduct

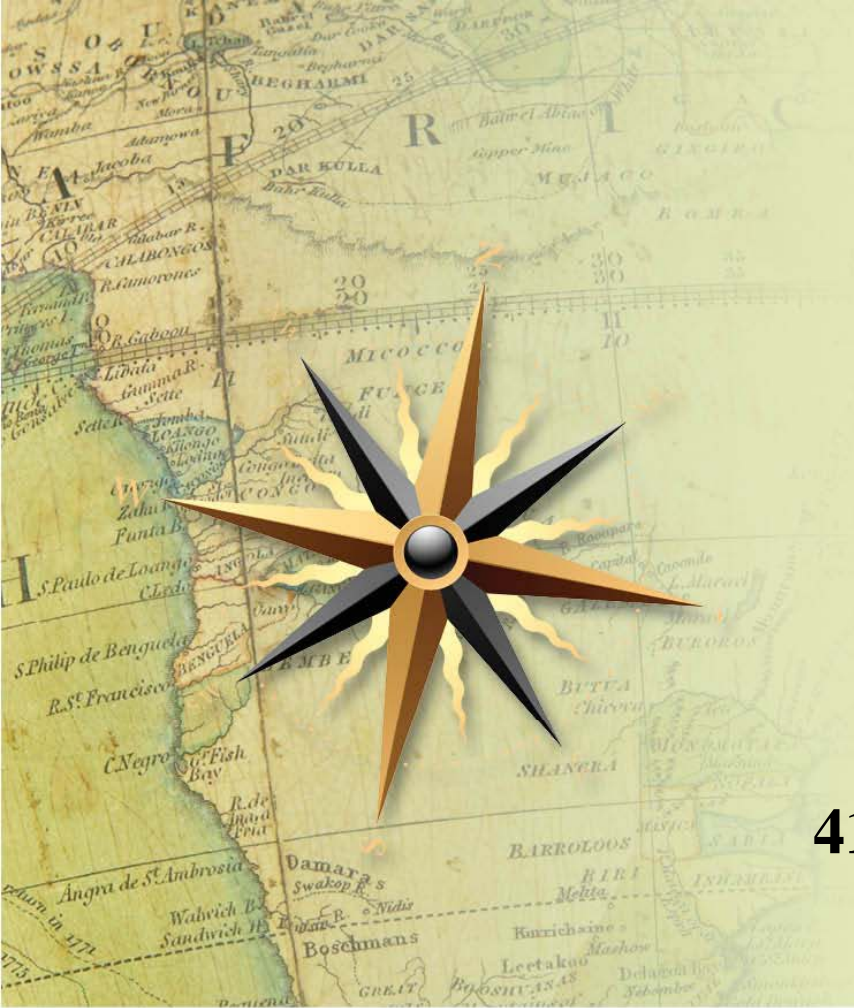
RETIREMENT ANNUITIES

- ❖ Causal event charges
 - Paid up
 - Transfers
- ❖ Investment decisions

Treating Customers Fairly

2013 - PRIORITIES

- ❖ Improve turnaround times
- ❖ Stakeholder management
 - Regulator
 - Funds
 - Administrators
 - Consultants: legal and actuarial



THANK YOU

**Block A, 4th Floor
Riverwalk Office Park
41 Matroosberg Road, Ashlea Gardens
Tel (012) 346 1738**

Muvhango Lukhaimane
Deputy Pension Funds Adjudicator

PENSION LAWYERS

A S S O C I A T I O N