

**Cases referred to by Alec Freund in case law update on
23 September 2009**

Highveld Steel & Vanadium Corporation Limited v Oosthuizen 2009 (4) SA 1 (SCA) – SCA holds that trustees have the power to withhold benefits pending the determination of a case to be brought by the employer for damages by reason of dishonesty

National Tertiary Retirement Fund v Registrar of Pension Funds (221/08) [2009] ZASCA (31 March 2009) – SCA holds registrar not entitled to refuse to approve rule change merely because it reduces existing benefits

The Pension Fund of the Democratic Nursing Organisation of South Africa v Botha 2009 JDR 0547 (GNP) – Pretoria High Court holds claim to recover overpayment prescribed because, if the trustees and administrators had exercised the necessary skill and diligence, they would have known of the overpayment much earlier

General Industrial Workers Union of South Africa v Chemical Industries National Provident Fund, unreported, 20368/2008 (judgment 30/1/09) – Pretoria High Court holds that a Pension Fund's rules may permit a trade union to determine who will be eligible for election as a board member

Seymour-Smith v Maxam Dantex South Africa (Pty) Limited 2008 JDR 0362 (W) – Johannesburg High Court holds trustees personally liable for costs and holds that trustees have a duty to preserve the rights and interests of all claimants where their decision is known to be challenged

Weber v Weber and Another, unreported, 961/2007 (judgment 23/4/09) – Mafikeng High Court dismisses a claim by a divorcee claiming a pension interest against a Pension Fund

Veldsman v Cape Joint Pension Fund [2008] 1 BPLR 80 (PFA) – Adjudicator upholds Fund's refusal to recognise portion of pensionable salary on the basis that contract of employment simulated

Mantshongo v New Tyre Manufacturing Industry Provident Fund (PFA/EC/10764/2006/SGM) – In determining complaint relating to repudiation of a claim for a disability benefit Adjudicator considers, not only whether the Fund acted in accordance with its rules, but also whether the insurer exercised its discretion reasonably

Clarke v Central Retirement Annuity Fund (PFA/EC/10556/2006/VPM) (and numerous similar cases) – Adjudicator assumes jurisdiction in complaints in respect of RA penalties imposed by insurers. Questionable whether these decisions are compatible with the decision of the Durban High Court in Old Mutual Life Assurance Co SA Limited v PFA and Others [2008] ZA KZHC 76 (15 October 2008)