

# **Non-payment of Contributions by the Employer: Recent Pension Funds Adjudicator Determinations**

- Beck N.O v THISDAY (PTY) LTD
- Sakhwe & Mpondombini v Security Employees National Provident Fund and AZA Day & Night Security (Pty) Ltd

# Summary

- Both complainants were in respect of non-payment of contributions by the employer
- Adjudicator found in favour of the Complainants
- The determinations and the Adjudicator's views
- , In first case the Adjudicator the ordered the payment of the outstanding contributions plus interest in terms of the Act, as well as a further penalty, namely, additional interest on the outstanding balance (including interest in terms of the Act), at a rate of 15.5 per cent.
- In the second case the Adjudicator only ordered payment of the arrear contributions and interest at a rate of 15.5 per cent.

# Beck/Thisday-The Facts

- Arrear contributions plus interest totalling R 1367 621,46
- Despite demands amount remained unpaid
- Relief sought was an order directing Employers to pay

# Sakhwe-The Facts

- 2 separate complainants but matter heard as one as was same facts and against same respondents
- Complainants had been contributing as per pay slips
- On retrenchment, Fund unable to pay

# Adjudicator Determinations

Thisday - The Employers were ordered

- to pay the arrears contributions
- penalty interest in terms of Section 13A of the Act
- *as well as* 15.5 per cent interest on the outstanding balance

# Adjudicator Determinations

**Sakhwe** - the Fund was ordered to calculate

- the Complainants' respective "member's accumulated share", taking into consideration member and employer contribution as per the rules
- interest on the outstanding amount at a rate of 15.5 per cent from 1 February 2004 until date of determination

# Pension Funds Act Provisions

- Section 13A(7)-Provision for payment of penalty interest at a rate prescribed by the Minister
- Non-payment of contributions is a criminal offence
- On conviction, liable for a fine not exceeding R2 000

# Adjudicator's views

- That the penalty of R2 000 currently provided for in the Act not appropriate
- Sakhwe employer referred to Prosecuting Authorities
- Practice of non-payment of contributions appears widespread
- Time for authorities to impose harsher sanctions



# Implications of determinations

- Interest ordered
- Formulating relief sought in complaints
- Rules must protect the Fund
- The Fund's options