

SUPREME COURT OF APPEAL

OF SOUTH AFRICA

MEDIA STATEMENT – *REGISTRAR OF PENSION FUNDS & ANOTHER v BRIAN ANGUS NO & OTHERS*

FROM: The Registrar, Supreme Court of Appeal

Date: 30 March 2007

Status: Immediate

With a combined actuarial surplus of about R9 billion for distribution the trustees of two industrial pension funds applied to the High Court at Pretoria for an order declaring that the funds were not subject to the Pension Funds Act. The Act has detailed provisions governing apportionment and distribution of such surplus and payment of minimum benefits.

If the funds were outside the terms of the Act they were not obliged by their rules to deal with the surplus other than by the trustees observing their legal duty to act with due care and good faith in the interests of members. The Registrar of Pensions argued that the Act applied. The High Court found that the funds were not subject to the Act but, instead, were governed by their own constitutions and rules.

On appeal to the SCA the High Court's decision was upheld. The SCA decided that a provision in the Pension Funds Act which says that it does not apply to a pension fund established 'in terms of' an industrial council

agreement meant not only a fund established in the agreement itself but also a fund – such as the two in question – established separately but in accordance with what such an agreement stated.