

FINANCIAL INSTITUTIONS OFFICE,

Private Bag 238,

PRETORIA.

25th April, 1966.

CIRCULAR NO. P.F. 8

(To all privately administered pension funds)

JUDGMENT RE FIDELITY COVER

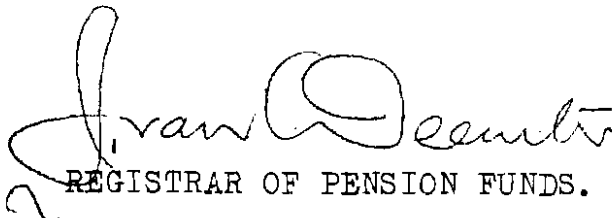
1. The attention of pension funds is invited to the judgment delivered in the case *RANDBANK BPK. vs. SANTAM VERSEKERINGSMAATSKAPPY BPK.*, as reported on pages 456 to 461 of *The South African Law Reports 1965 (2)*.

2. The following quotation from the judgment is of importance:

"The general principle is that where an agent contracting in the course of his employment and within the scope of his authority, fraudulently conceals or otherwise fails to disclose a fact known to him which, having regard to the nature of the contract, he ought to have disclosed to the other contracting party, his principal is liable for and must suffer the consequences of his concealment or non-disclosure. That responsibility of the principal attaches, at any rate in regard to the voidability of the contract even if he himself had no knowledge of the fact not disclosed or fraudulently concealed That conclusion is unfortunate for the plaintiff, a corporation, which can only act through an agent or employee, but the moral of this litigation seems to be that corporations would be well advised to effect such insurances only through an agent or employee (such as, for example, its attorney or auditor) whose fidelity is not intended to be guaranteed thereby."

3. This Office considers the judgment of such importance that pension funds are urged to obtain a copy thereof.

4. It is suggested that every pension fund consult its insurer to ensure that the fund's fidelity cover will not be voidable on the grounds set forth in the judgment.


REGISTRAR OF PENSION FUNDS.

KANTOOR VIR FINANSIËLE INSTELLINGS,

Privaatsak 238,

PRETORIA.

25 April 1966.

OMSENBRIEF NO. P.F. 8

(Aan alle privaat geadministreerde pensioenfondse)

HOFUITSPRAAK IN VERBAND MET GETROUHEIDSDEKKING

1. Die aandag van pensioenfondse word gevestig op die uitspraak in die saak RANDBANK BPK. vs. SANTAM VERSEKERINGSMAATSKAPPY BPK., soos gerapporteer op bladsye 456 tot 461 van The South African Law Reports 1965 (2).

2. Die volgende aanhaling uit die uitspraak (wat in Engels gerapporteer is) is van belang:

"The general principle is that where an agent contracting in the course of his employment and within the scope of his authority, fraudulently conceals or otherwise fails to disclose a fact known to him which, having regard to the nature of the contract, he ought to have disclosed to the other contracting party, his principal is liable for and must suffer the consequences of his concealment or non-disclosure. That responsibility of the principal attaches, at any rate in regard to the voidability of the contract, even if he himself had no knowledge of the fact not disclosed or fraudulently concealed That conclusion is unfortunate for the plaintiff, a corporation, which can only act through an agent or employee, but the moral of this litigation seems to be that corporations would be well advised to effect such insurances only through an agent or employee (such as, for example, its attorney or auditor) whose fidelity is not intended to be guaranteed thereby."

3. Hierdie Kantoor ag die uitspraak van soveel belang dat pensioenfondse aangeraai word om n afskrif daarvan te verkry.

4. Daar word aan die hand gedoen dat elke pensioenfonds met sy versekeraar oorleg pleeg ten einde te verseker dat die fonds se getrouheidsdekking nie op die gronde vermeld in die uitspraak vernietigbaar sal wees nie.


REGISTRATEUR VAN PENSIOENFONDSE.