

## **DO BOARDS OF TRUSTEES OF SOUTH AFRICAN RETIREMENT FUNDS OWE FIDUCIARY DUTIES TO BOTH THE FUNDS AND FUND MEMBERS? THE DEBATE CONTINUES**

**MC Marumoagae\***

### **SUMMARY**

Over the years, the South African retirement fund industry has experienced major regulatory changes. These changes were aimed at imposing a higher standard of governance on the boards of trustees governing various pension funds. As such, there has been a debate within the retirement fund industry as to whom the board, as the governing and managing body of the retirement fund, is accountable. South African courts and tribunals adjudicating pension fund related disputes and the retirement industry at large seem to share the view that the board of trustees is accountable to both the fund and its members. In that the board of trustees owes fiduciary duties to both the fund and its members, meaning that the board is required to act in the best interest of the fund and its members. However, in this paper I demonstrate that the boards of trustees of South African Pension Funds are accountable to and owe fiduciary duties only to the fund they serve and not members of those funds. Furthermore, I submit that at the very best the board owes a duty of good faith towards the members of the fund. In order to substantiate my submissions, I distinguish the legal position relating to trust law from the law relating to retirement funds in South Africa.

**KEYWORDS:** Retirement Fund, Board of Trustees, Best Interests of Members, Pension Fund Act, Fiduciary Duties, Trusts.

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\* Motseotsile Clement Marumoagae. LLB (WITS), LLM (NWU), LLM (WITS), Certificate in Advanced Broadcasting Law (Mandela Institute/WITS). Candidate Attorney, Benoni Justice Centre, Legal Aid South Africa, [djdialogue@gmail.com](mailto:djdialogue@gmail.com).