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Please quote our ref: **PFA/GA/31031/2009/LPM**

**PER REGISTERED POST**

Dear Mrs. Von Benecke

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): V L J VON BENECKE (“complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“first respondent”) AND OLD MUTUAL LIFE ASSURANCE COMPANY (SOUTH AFRICA) LIMITED (“second respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns the death value of a retirement annuity fund policy.
- 1.2 The complaint was received by this office on 28 October 2008. A letter acknowledging receipt thereof was forwarded to the complainant on 2 February 2009. On the same date letters were dispatched to the respondents giving them until 2 March 2009 to file their responses. A response was received from the second respondent on 18 February 2009. The response was forwarded to the complainant on 13 March 2009. No further submissions were received from the parties.

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The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

- 1.3 After considering the submissions before this tribunal it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties they will be repeated only to the extent that they are pertinent to the issues raised herein. The determination and reasons therefor appear below.

## [2] **FACTUAL BACKGROUND**

- 2.1 Mr. E.A.N. Goister (“the deceased”) passed away on 28 August 1999. During his lifetime the deceased had applied for and was admitted as a member of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 24 September 1989. Policy number 6313901 (“policy”) was issued to the first respondent by the second respondent for the deceased’s benefit. The second respondent is the first respondent’s underwriting insurer and administrator.
- 2.2 The policy was to endure until 1 September 2006. The second respondent was not informed of the deceased’s death until 9 October 2008. Meanwhile, the policy remained in force and participated in bonus declarations. The policy had a value of R399 368.84 (“post-death value”) at the time the second respondent was informed of the deceased’s death.
- 2.3 The complainant, who is the deceased’s daughter, approached the first respondent to claim the post-death value of the policy. The second respondent refused to accede to her claim. It instead offered to pay the policy value as at the date of the deceased’s death to his beneficiaries. It further made an *ex gratia* offer to pay the death claim value together with interest thereon computed from the date of death as opposed to the date of admission of the claim. Therefore, a gross amount of R132 561.81 (“death date value”) plus interest became payable to the deceased’s beneficiaries. The second respondent identified the

complainant and Mrs. H.M.G. Carter as beneficiaries. After the deduction of tax in the amount of R32 742.76 from the death value, the second respondent paid 50% of the remaining amount to the complainant and the remaining 50% was paid to Mrs. G.H.M. Carter. The complainant's portion was paid to her on 10 October 2008. It comprised a net death benefit of R49 909.53 plus interest of R33 606.50, totalling R83 516.03.

### **[3] COMPLAINT**

- 3.1 The complainant is dissatisfied with the payment of the death date value instead of the post-death value. She submits that the second respondent bore no investment risk and there is no reason for it to refuse to pay the post-death value. She finds the second respondent's explanation that contractually the policy cannot earn returns after the deceased's death, to be unacceptable. She asks who benefits from the returns earned by the policy after the deceased's death.
- 3.2 She seeks an order that she be paid the difference of the amount already paid by the second respondent and the post-death value.

### **[4] RESPONSE**

- 4.1 The second respondent states that the complainant was paid an amount of R49 909.53, being 50% of the death date value net of tax. Interest is currently added to death claims from the date the second respondent admits a claim until the date of payment of interest, but in this matter it added interest from the date of death. The death benefit payable is subject to the provisions of the first respondent's Rules and the retirement annuity contract. Page 3 of the contract clearly states that on death before the maturity date of the policy, the balance in the accumulation account becomes available to purchase an annuity. The

death value is the fund value as at the date of death. The death date value was R132 561.81 in this case.

- 4.2 The second respondent was unaware of the deceased's death and the policy remained in force. The policy effectively ceases on the date of the deceased's death. The second respondent carried the investment risk between the date of death and the date it acquired knowledge of the deceased's death. Had the investment markets suffered losses during the relevant time, the second respondent would have been liable to compensate for any loss suffered by potential beneficiaries. The benefit or loss, whichever is applicable, cannot be passed on to the policy because the value is payable as at the date of death.
- 4.3 Once the second respondent has accepted that there is a valid claim the funds get switched to the general business fund from which point late payment interest may be paid because the funds would be in an interest-bearing account. Payment of the death benefit was done in terms of the Rules and contract. Although interest was payable from the date the claim was admitted, the second respondent calculated interest from the date of the deceased's death to the date of payment as a gesture of goodwill. No further benefits are due under the policy.

**[5] DETERMINATION AND REASONS THEREFOR**

- 5.1 The complainant is dissatisfied with the payment of the death date value instead of the post-death value. It needs to be determined whether or not the second respondent acted lawfully in paying the death date value.
- 5.2 The policy commenced on 24 September 1989 and was to mature on 1 September 2006. However, the deceased passed away on 28 August 1999, approximately seven years before the maturity of the policy. In terms of the Act, the first respondent's Rules and the contractual

provisions, a death benefit becomes payable to the deceased's dependants in these circumstances. Rule 5.1 of the first respondent's Rules provides that in the event of the deceased's death, a capital sum not exceeding the lesser of a return of contributions together with interest at the rate stated in the policy or the capitalised value of the retirement annuity as determined in accordance with the annuity policy; or an annuity or both capital sum and the annuity payable in terms of the policy, shall become payable. Clause 2 of the policy contract deals with benefits payable by the second respondent and provides that:

“By dood voor 01/09/2006 is die balans in die Akkumulasierekening beskikbaar om 'n annuïteit mee te koop.”

- 5.3 Therefore, the death benefit payable under the policy accrued when the deceased passed away. The accrual event means that the value payable to the deceased's dependants is determined as at the date of death regardless of any negative or positive investment returns earned thereon after the date of death. The second respondent bore the investment risk for the duration of the period that it remained unaware of the deceased's death. Had the financial markets performed badly to the extent that the policy value dropped below what it was at the date of death, the second respondent would still be expected to pay out what accrued at the date of death. Similarly, in the case of positive investment returns being earned after the deceased's death, the second respondent is expected to pay the value that accrued upon the deceased's death.
- 5.4 Therefore, the second respondent acted lawfully in paying the death date value instead of the post-death value. The complainant is not entitled to fund returns after the deceased's date of death.

6.1 The complaint is dismissed.

**DATED AT JOHANNESBURG ON THIS 16<sup>th</sup> DAY OF AUGUST 2011**

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**DR. E.M. DE LA REY**  
**ACTING PENSION FUNDS ADJUDICATOR**

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OMSTA Complaints Administration  
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**Section 30M filing: High Court**

*Parties Unrepresented*