HIGH COURT OF AUSTRALIA

Public Information Officer

19 June, 2003

<u>PAUL JOHN COOK (as trustee of the property of Peter Robert Benson) v PETER ROBERT BENSON, LEGAL AND GENERAL SUPERANNUATION SERVICES PTY LTD, PRUDENTIAL CORPORATION AUSTRALIA LIMITED, AND MERCANTILE MUTUAL CUSTODIANS PTY LTD</u>

The High Court of Australia today dismissed an appeal by Mr Benson's trustee in bankruptcy, Mr Cook, who sought to recover $80,000 from a lump-sum superannuation pay-out that Mr Benson rolled over to three other super funds.

Mr Benson was employed by Industrial Sales and Service (Tas) Pty Ltd from 1972 to 1990 and was a member of ISAS's super fund. When ISAS went into liquidation in 1990, Mr Benson lost his job and received a lump-sum benefit of $96,192.36. He re-invested $80,000 in other superannuation funds: $20,000 each to Legal and General and Mercantile Mutual and $40,000 to Prudential.

Mr Benson became bankrupt in July 1992. The trustee sought to recover the $80,000 for the benefit of creditors. The Federal Court and Full Court of the Federal Court held that the payments were dispositions of property covered by section 120 of the Bankruptcy Act. But the Full Court, by majority, held that they fell within an exception made for settlements of property in favour of a purchaser in good faith and for valuable consideration and this defeated Mr Cook's claim.

The High Court, by a 4-1 majority, upheld the decision of the Full Court of the Federal Court. The High Court held that the payments were made in return for obligations undertaken by the trustees of the super schemes to provide Mr Benson with the rights and benefits to which he would eventually become entitled. Those rights and benefits constituted substantial and valuable consideration for Mr Benson's contributions and the trustees of the superannuation schemes were purchasers for valuable consideration.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*