FTR Now

Supreme Court of Canada Grants Leave to Appeal in *Indalex* Decision

Date: December 1, 2011

Earlier today, the Supreme Court of Canada granted leave to appeal in *Sun Indalex Finance, LLC v. United Steelworkers* ("*Indalex*"). The appeal relates to a decision rendered by the Ontario Court of Appeal in April 2011 in which that Court granted "super priority" to pension funding deficits in a Companies' Creditors Arrangement Act proceeding. A detailed discussion of the Court of Appeal decision is found in our FTR Now of April 15, 2011.

While it will be many months before the Supreme Court of Canada hears this appeal and then renders its decision, both insolvency and pension experts are hopeful that the Supreme Court of Canada will provide further clarity on the issues raised in *Indalex*, including the issue of how officers and directors are to manage the fiduciary duties owed to plan members along with the fiduciary duties owed to the corporation.

Hicks Morley's Pension and Benefits group will closely monitor the progress of these appeal proceedings. If you have any questions about the *Indalex* decision, please contact any member of our Pension and Benefits group.

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