



Indalex Limited (Supreme Court of Canada)

We act for retirees in the company's CCAA proceedings who faced losses to their pension benefits due to the company's underfunding of the pension plan. We brought a motion to the court for payments of amounts owing to the underfunded pension plan in priority to the claim of Indalex's U.S. affiliate which had guaranteed the DIP loan. In a landmark decision that represents the high water mark for the protection of pensioners in an insolvency proceeding, the Ontario Court of Appeal confirmed the validity of the Pension Benefits Act (PBA) deemed trust in CCAA proceedings and also ruled that Indalex breached its fiduciary duty to the pension plan members. On further appeal, the Supreme Court of Canada upheld the Ontario Court of Appeal's ruling that the PBA deemed trust is valid and that Indalex breached its fiduciary duty to the pension plan members, but the Supreme Court held that the U.S. affiliate had priority ahead of the retirees for the funds in dispute based on the doctrine of paramountcy. Following the Supreme Court's decision, we advanced the deemed trust priority for our clients against the remaining funds in the estate. Prior to the motion hearing, a settlement was reached which the court subsequently approved and resulted in a payment to our clients. [Andrew Hatnay](#) led the Koskie Minsky team, with assistance from [Demetrios Yiokaris](#) and [Garth Myers](#).