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PUBLICATION

Court Creates Potential New Hurdle For Insolvent Companies That Sponsor Employee Pension Plans and Seek New Financing

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Insolvent companies with under-funded employee pension plans that want to borrow money to keep operating and ultimately return to profitability may find it tougher to find new financing as a result of a recent Ontario Court of Appeal decision.

The Court ruled on April 7 that Indalex Limited (and certain affiliated companies), the second largest aluminum extrusion company in North America, which administered two pension plans, one for employees and the other for executives, was obliged to pay its pension

The fact that Indalex was the administrator of the pension plans covering its executives and other employees was central to the Court's decision. In that decision, the Court left open the possibility that, on different facts, it might have decided differently.