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December 10, 2024

Pension and Workers Funds Awarded \$259 Million After Partner Sells Business, Prepays Loans En Masse Law

Interviewed by Canadian Lawyer, Dena Varah discusses our trial success in *WSIB Investments (Infrastructure) Pooled Fund Trust v Plenary Group (Canada) Ltd*, a decision that reinforces foundational fiduciary duties.

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Dena Varah, a partner at Lenczner Slaght who represented the plaintiffs, told Canadian Lawyer Kroft's decision confirmed that "the structure of an arrangement actually matters" and partnerships like the one between the plaintiffs and Plenary involved duties "that are not going to be so easily displaced, certainly not without significant discussion and agreement.

"That was an important part of our case... the vulnerability that our clients had to that structure and to the fiduciaries who were running it," Varah says. She added that Kroft's decision was "a reinforcement, really, of what the court has done vis-à-vis contractual interpretation over the last 10 years."

"It is a reinforcement of fiduciary relationships, and also it's a reinforcement of, you don't get to profit from those fiduciary relationships," Varah adds. "The remedy of a disgorgement says you have to give back what was basically self-dealing. You took advantage of this. You took what belonged to the limited partners for yourself, and you don't get to keep it."