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***U.S. SUPREME COURT DENIES BACKPAY AWARDS TO
ILLEGAL ALIENS.***

TO: Clients and Friends of The Firm

DATE: April 1, 2002

The United States Supreme Court ruled last week in a 5-4 decision that the National Labor Relations Board (the “Board”) may not award backpay as a remedy for an employer's violation of the National Labor Relations Act (“NLRA”) to an undocumented alien who was never legally authorized to work in the United States. The Supreme Court did permit other, non-monetary sanctions against the employer, including enforcing the Board's order that the employer cease and desist its violations and that the employer post notices detailing its employees' rights and its prior illegal practices.

In Hoffman Plastic Compounds, Inc. v. N.L.R.B., the Supreme Court was presented with the question of whether the Board could award backpay to an illegal worker. For purpose of the appeal, the parties agreed that the employer had violated the NLRA when it fired several employees for their union-organizing activities and that one of those employees never had been lawfully permitted to work in the United States.

According to the Supreme Court’s decision, the Board must respect federal immigration policy, as set out in the Immigration Reform and Control Act of 1986 (“IRCA”), which prohibits the employment of illegal aliens and which establishes an extensive employment-verification system, including requiring employers to verify potential employees’ employment status and to deny employment to aliens who are not lawfully authorized to work in the United States. IRCA also makes it a crime for an employer to knowingly hire undocumented workers and for employees to present fraudulent documents to obtain a job. Thus, the Supreme Court held that an award of backpay – designed to compensate the employee for his lost wages – would circumvent federal immigration policy, condone prior

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IRCA violations, and expressly encourage future violations. Accordingly, the Supreme Court held that the Board could not award backpay to illegal aliens.

The natural consequences of this case should be of great value to employers who discover that one of their employees – perhaps even a plaintiff against them – has not been lawfully permitted to work in the United States. A very strong argument now exists that, in employment-related claims, federal law (and some state-law cases) prohibit agencies, judges, juries, and arbitrators from awarding backpay or frontpay to, or ordering reinstatement of, an employee who was never lawfully authorized to work in the United States.

We encourage you to call your SFSR attorney at (310) 201-4700 to discuss the Supreme Court's decision, and the impact of this decision on your Company's operations.

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