Court File No. CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and NOVAR INC.

Applicants

MOTION RECORD

(Returnable February 28, 2013)

February 19, 2013

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TO: The Service List

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TAB 1

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the Applicants

NOTICE OF MOTION

FTI Consulting Canada ULC, the Court-appointed Monitor (the "**Monitor**") of Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (collectively, the "**Applicants**"), will make a motion to the Court on February 28, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order abridging the time for service of the Notice of Motion and the Motion Record and a direction that any further service of the Notice of Motion and Motion Record be dispensed with, if necessary;

2. An order extending the Stay Period provided under the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 until June 28, 2013; and

3. An order approving the Eighteenth Report and the activities of the Monitor described therein.

THE GROUNDS OF THE MOTION ARE:

1. The grounds set forth in the Eighteenth Report of the Monitor;

2. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

3. Section 11.02 of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36; and

4. Such further grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Eighteenth Report of the Monitor dated February 19, 2013; and

2. Such further and other materials as counsel may advise and this Honourable Court may permit.

February 19, 2013

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and NOVAR INC.

Court File No: CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB 2

Court File No. CV-09-8122-00CL

Indalex Limited
Indalex Holdings (B.C.) Ltd.
6326765 Canada Inc. and
Novar Inc.

EIGHTEENTH REPORT OF THE MONITOR
February 19, 2013

Court File No. CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INDALEX LIMITED
INDALEX HOLDINGS (B.C.) LTD.
6326765 CANADA INC. and
NOVAR INC.

EIGHTEENTH REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA ULC IN ITS CAPACITY AS MONITOR

INTRODUCTION

1. On April 3, 2009, Indalex Limited ("**Indalex**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**") and Novar Inc. ("**Novar**") (collectively, the "**Applicants**") made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and an Initial Order (the "**Initial Order**") was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009 (the "**Stay Period**"), and appointing FTI Consulting Canada ULC as monitor ("**FTI Canada**" or the "**Monitor**"). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. Indalex's parent is Indalex Holding Corp. ("**Indalex Holding**"), which is a wholly-owned subsidiary of Indalex Holdings Finance, Inc. ("**Indalex Finance**"). Indalex BC, 632 and Novar are wholly owned subsidiaries of Indalex. On March 20, 2009, Indalex Holding, Indalex Finance, Indalex Inc., Caradon Lebanon, Inc. and Dolton Aluminum Company, Inc. (collectively, the "**US Debtors**") commenced proceedings (the "**Ch.11 Proceedings**") under chapter 11 of the United States Bankruptcy Code (the "**USBC**") in the United States Bankruptcy Court, District of Delaware (the "**US Court**"). The case was assigned to Judge Walsh.

3. On April 8, 2009, Justice Morawetz granted the Amended and Restated Initial Order which, *inter alia*, approved the DIP Credit Agreement (as defined in paragraph 33 of the Amended and Restated Initial Order). The Amended and Restated Order was further amended on May 12, 2009, to correct certain references and typographical errors in the Amended and Restated Initial Order, and on June 12, 2009, to increase the Canadian sub-facility borrowing limit.

4. The Stay Period has been extended a number of times and, on January 23, 2012, was extended until and including 30 days following the release of the Supreme Court of Canada's decisions on the appeals in *Sun Indalex Finance, LLC, et al. v. United Steelworkers et al.* The Supreme Court of Canada's decision was released on February 1, 2013 and, accordingly, the stay expires on March 3, 2013.

5. On April 22, 2009, Justice Morawetz granted an Order which, *inter alia*, approved the Marketing Process to identify a Stalking Horse bid for Indalex's assets.

6. On July 2, 2009, Justice Morawetz granted an Order which approved the Stalking-Horse Bid of Sapa Holding AB ("**Sapa**") as a "Qualified Bid" under the Stalking Horse Process and the Bidding Procedures.

7. No additional Qualified Bids were received in connection with the Stalking Horse Process prior to the Bidding Deadline and on July 20, 2009, the sale of substantially all of the assets and business of the Applicants and the US Debtors pursuant to the terms of the Asset Purchase Agreement dated as of June 16, 2009 by and among the US Debtors and the Applicants (other than Novar), as sellers, and Sapa, on its own behalf and on behalf of one or more Canadian Purchasers to be named (the "**Sapa Transaction**") was approved by the Court pursuant to the Order of Justice Campbell (the "**Approval and Vesting Order**"). The US Court approved the Sapa Transaction on the same date.

8. On July 30, 2009, a procedure for the submission, evaluation and adjudication of claims against the Applicants and for the submission of claims, if any, against the directors and officers of the Applicants (the "**Claims Procedure**") was approved pursuant to the Order of Justice Morawetz (the "**Claims Procedure Order**").

9. The Sapa Transaction closed in Canada and the U.S. on July 31, 2009. On the same date, all of the Applicants' directors and officers resigned.

10. On October 14, 2009, Judge Walsh of the US Court granted an order converting the Ch.11 Proceedings to proceedings under Chapter 7 of the USBC (the "**Ch.7 Proceedings**").

11. On October 27, 2009, the Court granted an order (the "**Monitor's Powers Order**") increasing the Monitor's powers in order to facilitate the orderly completion of the CCAA Proceedings and the winding up of the Applicants' estates, including

    (a) Completing the Claims Procedure;

(b) Completing the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction. The working capital adjustment and the final purchase price were settled between the Applicants, the US Debtor, Sapa, Sun Indalex Finance, LLC ("**Sun**") and the Monitor in July, 2010. As a result, the Monitor received a total of US$4,485,000 in additional proceeds;

(c) Responding to the leave to appeal motion of the Retired Executives in connection with the SERP Motion and any resulting appeal. The Retired Executives' motion for leave to appeal was dismissed by the Court of Appeal on March 24, 2010; and

(d) Responding to any matters resulting from the decision of Justice Campbell in relation to the Deemed Trust Motions (defined below) and the Bankruptcy Leave Motion (defined below), including the filing of or responding to any appeal therefrom and the filing of any assignment in bankruptcy of any Applicant.

PURPOSE OF REPORT

12. The purpose of this, the Monitor's Eighteenth Report, is to inform the Court on the following:

(a) The status of the Claims Procedure;

(b) The status of the appeal of the Deemed Trust Motions; and

(c) The request for an extension of the Stay Period until June 28, 2013.

13. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and where appropriate the Applicants' books and records. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

14. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars. Capitalized terms not otherwise defined herein have the meanings defined in prior Monitor's Reports. Copies of the prior Monitor's Reports and the other materials filed with the Court can be obtained from the Monitor's website at: http://cfcanada.fticonsulting.com/indalex/.

STATUS OF CLAIMS PROCEDURE

15. The Claims Procedure was conducted in accordance with the Claims Procedure Order.

16. A determination as to the validity of unsecured Claims has been held in abeyance pending a determination as to whether there will be funds available to distribute to unsecured creditors.

17. In addition to the unsecured claims, the Monitor received 17 D&O Proofs of Claim by the Claims Bar Date and one draft D&O Proof of Claim from the United Steelworkers in October 2010. The Monitor reviewed the 18 D&O Proofs of Claim and, based on its review, formed the opinion that the D&O Claims did not trigger the indemnity in favour of the directors and officers that is secured by the Directors' Charge.

18. Accordingly, the Monitor brought a motion seeking: (a) an order declaring that none of the D&O Claims are claims for which the Applicants are required to indemnify their directors and officers; and (b) an order terminating, discharging and releasing the Directors' Charge from the Property (the "**D&O Motion**"). The D&O Motion was heard by Justice Campbell on November 10, 2010 and the decision remains under reserve.

19. Since the release of the SCC Decision (as defined below), Justice Campbell has requested that the parties who participated in the D&O Motion review the factual record that was before His Honour on November 10, 2010 and confirm whether it is complete. This is expected to be done over the next few weeks.

DEEMED TRUST MOTIONS

20. On August 28, 2009, the Retired Executives and certain members of the United Steelworkers Union (the "**USW**") brought motions seeking declarations that the property of the Applicants is subject to deemed trusts under the *Pension Benefits Act* (the "**PBA**") in favour of the beneficiaries of the "Executive Pension Plan" and the "Salaried Pension Plan", respectively and that the wind-up deficiencies in those Plans should be paid in priority to all other creditors (the "**Deemed Trust Motions**").

21. On the same date, the Applicants brought a motion for leave to lift the stay of proceedings for the purpose of allowing one or more of the Applicants to file an assignment in bankruptcy (the "**Bankruptcy Leave Motion**").

22. The Deemed Trust Motions and the Bankruptcy Leave Motion were heard by Justice Campbell on August 28, 2009. On February 18, 2010, Justice Campbell released written reasons dismissing the Deemed Trust Motions, holding that no deemed trusts arose with respect to wind up deficiencies under either the Executive Pension Plan or the Salaried Pension Plan (the "**Deemed Trust Decision**"). Based on the Deemed Trust Decision, Justice Campbell concluded that it was unnecessary to deal with the Bankruptcy Leave Motion.

23. Leave to appeal the Deemed Trust Decision was granted by the Court of Appeal for Ontario on May 20, 2010 and the appeal was heard on November 23 and 24, 2010 (the "**Pension Appeal**").

24. On April 7, 2011, the Court of Appeal for Ontario allowed the Pension Appeal and ordered the Monitor to pay from the Reserve fund into each of the Salaried Pension Plan and the Executive Pension Plan an amount sufficient to satisfy the deficiencies in each plan (the "**CA Pension Decision**"). The Court of Appeal found that: (a) the PBA deemed trust applies to the wind-up deficiency of wound up pension plans (as the Salaried Pension Plan was at the time) but declined to decide whether the deemed trust applied to the wind-up deficiency of a plan that had not been wound up (as the Executive Plan was at the time); (b) the PBA deemed trust has priority over the DIP Charge; (c) Indalex breached its fiduciary duty to the plans' beneficiaries by taking actions, including applying for CCAA protection and seeking approval of the DIP Loan and priority charge, which had the potential to adversely affect the plans' beneficiaries; and (d) the appropriate remedy for the breach of fiduciary duty was to impose a constructive trust over the proceeds of the Sapa Transaction in respect of both the Salaried Pension Plan and the Executive Pension Plan which ranked ahead of the DIP Charge.

25. The US Chapter 7 Trustee, Sun and the Monitor, on behalf of Indalex Limited, filed applications for leave to appeal the CA Pension Decision to the Supreme Court of Canada (the "**SCC Leave Applications**"). The SCC Leave Applications were granted by the Supreme Court of Canada on December 1, 2011.

26. The appeal of the CA Pension Decision was heard by the Supreme Court of Canada on June 5, 2012.

27. On February 1, 2013, the Supreme Court of Canada released its decision (the "**SCC Decision**"), allowing the appeals of the US Chapter 7 Trustee, Sun and the Monitor. The Supreme Court of Canada found that the deemed trust provision contained in the PBA does not apply to the wind-up deficit of a pension plan that has not been wound up (as the Executive Pension Plan was at the time). With respect to wound up pension plans (as the Salaried Pension Plan was at the time), the majority of the Court determined that the PBA deemed trust applies to the wind-up deficiency payments contemplated in the PBA to the extent of accounts and inventory. However, the SCC found that the DIP Charge granted by the CCAA judge trumped the provincial PBA deemed trust.

28. The Supreme Court of Canada also determined that Indalex, as the employer-administrator of both the Salaried Pension Plan and the Executive Pension Plan, had breached its fiduciary duty to plan members when it sought approval of the DIP Loan and DIP Charge without taking steps to ensure that its pension plan beneficiaries had the opportunity to have their interests effectively represented. Indalex did not breach its fiduciary duties by considering, seeking or obtaining CCAA protection (or by failing to give notice of the initial CCAA application), nor did it breach its duties by making a bankruptcy application. However, the majority of the Supreme Court of Canada agreed that the outcome of the restructuring would have been no different had the members been represented by a third party or been given notice of the DIP approval motion. As a result, the Supreme Court of Canada reversed the decision of the Court of Appeal and refused to impose a constructive trust over the sales proceeds in the amount of the deemed trust.

EXTENSION OF THE STAY PERIOD

29. The Stay Period currently expires on March 3, 2013. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including, *inter alia,* the determination of the D&O Motion and the distribution of proceeds from the Sapa Transactions.

30. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay Period until June 28, 2013.

The Monitor respectfully submits to the Court this, its Eighteenth Report.

Dated this 19th day of February, 2013.

FTI Consulting Canada ULC
in its capacity as the Monitor of
Indalex Limited, Indalex Holdings (B.C.) Ltd.,
6326765 Canada Inc. and Novar Inc.

Nigel D. Meakin
Senior Managing Director

TAB 3

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Court File No. 09-CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE M	)	THURSDAY, THE 28th DAY
	)	
JUSTICE	)	OF FEBRUARY, 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INDALEX LIMITED
INDALEX HOLDINGS (B.C.) LTD.
6326765 CANADA INC. and
NOVAR INC.

ORDER
(Stay Extension)

THIS MOTION, made by FTI Consulting Canada ULC, the Court-appointed Monitor (the "**Monitor**") of Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the "**Applicants**"), for an order extending the Stay Period (as defined below) and an order approving the Eighteenth Report of the Monitor and the activities of the Monitor described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

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ON READING the Motion Record of the Monitor, including the Eighteenth Report of the Monitor dated February 19, 2013 (the "**Eighteenth Report**"), and on hearing the submissions of counsel to the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged and that the motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with, if necessary.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009) is extended until June 28, 2013.

MONITOR'S ACTIVITIES

3. **THIS COURT ORDERS** that the Eighteenth Report and the activities of the Monitor described therein are approved.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD. 6326765 CANADA INC. and NOVAR INC.

Court File No: 09-CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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Court File No: CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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MOTION RECORD
(RETURNABLE FEBRUARY 28, 2013)

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