

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
1985, R.S.C. 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

**AFFIDAVIT OF MAX DEGEN
(sworn August 6, 2009)**

I, MAX DEGEN, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a former executive employee of Indalex Division of Indal Limited, which is a predecessor company to Indalex Limited and/or one of its affiliated companies, (collectively, "Indalex Canada" or the "company"), who are the Applicants in these proceedings.

2. I am currently 76 years of age. I have been retired for 15 years. When I retired, I was the Vice-President of Manufacturing Services of Indalex for North America. I worked in the extrusion industry for almost 40 years and with the Indalex group of companies (including related or predecessor companies) for 32 years. As a former employee and current pensioner of Indalex Canada, I have knowledge of the matters to which I hereinafter depose, except where stated to be based upon information and belief.

Overview

3. I am part of a group of pensioners along with Keith Carruthers, Leon Kozierok, Bertram McBride, Eugene D'Iorio, Richard Smith, Robert Leckie, Neil Fraser, Richard Benson, John Faveri, Jack Rooney, Robert Waldron and Fred Granville (the "Pensioners"). The Pensioners are members of the Retirement Plan for the Executive Employees of Indalex Limited and Associated Companies (the "Executive Plan").

4. I believe it is important for this Court to be aware of the years of work that I and the other Pensioners contributed to the success of the Applicants. Prior to our retirement through our years of employment with the Applicants and their predecessors, we became entitled to receive pension benefits to be paid during our retirement years for our lifetimes. I and the other Pensioners who I have spoken with are shocked and dismayed that the Applicants have terminated payment of our Supplementary pension benefits and, to make matters worse, we are now facing an additional loss to our retirement incomes when the underfunded Executive Plan will be wound up.

5. The Executive Plan is underfunded. There is an approximate \$3.2 million wind up deficiency in the Executive Plan.

6. To make matters worse, the Pensioners have not been paid any of our pension benefits under the Supplemental Plan since the Company obtained protection from its creditors under the *CCAA* on April 3, 2009. We have lost pension benefits under the Supplemental Plan completely.

7. As such, unless the amounts owed under the Executive Plan are subject to a deemed trust or administrator's charge under the *Pension Benefits Act*, the Pensioners will lose approximately

one-half to two-thirds of their current pension benefits. This is a dramatic drop to our fixed incomes during our retirement years.

8. This affidavit is sworn in support of a motion by the Pensioners for a declaration that the amounts owed to the Executive Plan, namely the \$3.2 million, are subject to a deemed trust.

9. This affidavit is sworn further to a recent affidavit to be sworn by Keith Carruthers, the June 23, 2009 affidavit of Keith Carruthers and the July 17, 2009 affidavit of Andrea Mckinnon, which I understand from my lawyers will also be filed in support of this motion. The recent affidavit of Keith Carruthers also sets out the background and relevant documentation regarding the Executive Plan, Supplemental Plan, and the wind-up deficiency.

Background

10. Since 1955, I was working in the Canadian Aluminium industry. At that time, I was in the engineering department of Aluminium Extruders, in St. Therese, Quebec. In 1956 I was promoted to a superintendent and continued to work there over the next decade.

11. In 1961, I was asked to help in the start up of Indalex in Cheltenham, United Kingdom and was given a leave of absence to do so. Upon my return from England, Aluminium Extruders was purchased by Reynolds.

12. In 1962, I was hired by Custom Air Aluminium to build a plant in Pointe Claire, Quebec. Custom Air Aluminium was shortly thereafter purchased by Indalex.

13. In 1969, I was appointed as a Plant manager at Vancouver. In 1975, I was eventually appointed as a manufacturing manager. In the 1970's, I advised Indalex about acquiring new

plants throughout North America, including those in California, Pennsylvania, Illinois, and Mississippi.

14. In the 1980's, I was appointed as the Vice President of Manufacturing Services.

15. During my time as manufacturing manager and Vice President of Manufacturing Services, I opened or modified a number of other plants throughout Canada for Indalex, including Calgary, Vancouver, Mississauga, and Montreal, along with the odd international posting.

16. At the age of 61, I retired in May 1994.

Hardship Caused by the Termination of our Pension Benefits

17. I, along with the other Pensioners are directly impacted by the company's sudden termination of payment of our monthly benefits from the Supplemental Plan. Our benefits under the Executive Plan will be greatly reduced unless the \$3.2 million held in reserve with the Monitor is paid to the plan. The Pensioners were contractually promised that our pension benefit payments would continue to be paid by the company for our lifetimes and in some cases with survivor benefits to be paid to our surviving spouses.

18. The Pensioners were a dynamic work force that built and operated Indalex into a world class, modern, efficient and very profitable business over many years. However, to the people who decide our future, we are only pensioners and unsecured creditors.

19. I for my part worked on my goal to improve and better Indalex ever since I joined the company in 1962.

20. We started as the first independent aluminum extruder, a run of the mill company, and on my retirement I left a world class state of the art extrusion business, delivering quality metal to our very satisfied customers. I designed the best plants Indalex operated when it sold.

21. During this long journey we adapted the latest technology and environmental friendly methods and equipment. Over the years we encountered many obstacles, but we resolved these problems with our efforts and ingenuity.

22. I invented and received US and Canadian Patents for a "fixed dummy block". This device was needed for our goal to further improve automation and productivity. The fixed dummy block is still used all over the world in the extrusion industry!

23. At that time, I received one Dollar for my effort and the satisfaction to have succeeded.

24. All our plants specifically, Anodizing and Paint lines, were fitted with the latest pollution control equipment.

25. We all deserve better than the treatment we are receiving from the current company.

26. My wife has no income. My wife and I are entirely reliant on the pension benefits that I earned for the work I performed for Indalex. The reduction in the Executive Plan (compounded by the cessation of the pension benefits under the Supplemental Plan) will cause a significant and sudden drop in our monthly retirement income and has/will cause immediate hardship to my family. My wife and I require these pension benefits in order to cover our daily living and health expenses. My wife is dependent on my pension benefits and will require these funds to cover her living expenses on my passing.

27. In 1994 I signed a contract to receive my pension and selected a 41% Joint and Survivor (Member Death) plan at my retirement because my wife is 20 years my junior.

28. If our main pension, the Executive Plan, is wound up in an underfunded state, it will put not only my, but my spouse's future in jeopardy.

29. If we had known that Indalex would break its contractual obligations to pay our pensions, my wife could have further pursued her career and built up her own pension plan instead of depending on mine.

30. We all deserved that the company would have defended our rights but all our efforts to reinstate our Supplemental Plan have been dismissed.

31. I am currently 76 years of age. I am too old to find new employment that would pay me for the loss of my pension benefits.

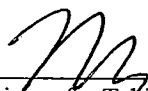
32. After 32 years of service with the company, I would be disappointed and shocked by the company's decision to object to the within motion and by the company allowing the Executive Plan to become so underfunded (I am also further disappointed and shocked by the company's refusal to pay pension benefits from the Supplemental Plan).

33. It is unfair to discriminate against me and the other Pensioners by not funding our pensions under the Executive Plan (and terminating our supplemental pension benefits) while other pension plans have been and will continue to be funded. According to paragraph 66 of the Affidavit of Timothy Stubbs filed by the company in support of the original CCAA stay (the "Stubbs Affidavit), Indalex Canada has maintained its obligations for "payroll, source deductions, current pension liabilities and GST, and was not in arrears in respect of these items".

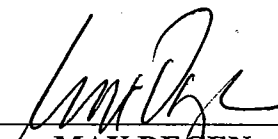
Further, according to paragraphs 64 and 65 of the Stubbs Affidavit, Indalex Canada "is current on all payments" to the Canada-Wide Industrial Plan for its unionized employees and to the Group Registered Retirement Savings Plan for its union employees at the Port Coquitlam facility.

34. I swear this Affidavit in good faith and in support of a motion that \$3.2 million of the company's funds is subject to a deemed trust under the *Pension Benefits Act* in respect of the wind up deficiency of the Executive Plan and for no improper purpose.

SWORN BEFORE ME at the
City of, Toronto in the
Province of Ontario, on August
6, 2009.



Commissioner for Taking Affidavits



MAX DEGEN