

**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 April 29, 2010)**

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MOTION RECORD

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TAB 1

**ONTARIO
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NOTICE OF MOTION

BLAKE, CASSELS & GRAYDON LLP (“Blakes”), lawyers of record for the Applicants, will make a motion to the Court on Thursday the 29th day of April, 2010 at 9:30 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 will be heard orally.

THE MOTION IS FOR:

- (a) an order removing Blakes as lawyers of record for the Applicants;
- (b) dispensing with the requirement for the Applicants to appoint a new lawyer or obtain leave to be represented by a person other than a lawyer;
- (c) an order that all past amounts incurred by Blakes and certain further amounts incurred by Blakes shall be secured by the Administration Charge (as defined in the Amended and Restated Initial Order in the within proceedings, dated May 12, 2009); and
- (d) such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS for the motion are:

- (a) the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 declared that the Applicants were companies to which the *Companies' Creditors Arrangement Act* ("CCAA") applied and appointed FTI Consulting Canada ULC as Monitor (the "**Monitor**");
- (b) through the CCAA proceedings, substantially all of the assets and business of the Applicants have been sold;
- (c) as a result, the Applicants are now only insolvent shell corporations which are not carrying on business;
- (d) the only remaining material matter in the CCAA proceedings is litigation involving leave to appeal a decision of Mr. Justice Campbell dated February 18, 2010 by the United Steelworkers Union and certain retired executives of the Applicants (the "**Litigation**");
- (e) pursuant to the Order of the Honourable Mr. Justice Morawetz dated October 27, 2009, the Monitor has been granted certain powers, including the power to act in the name of and on behalf of the Applicants in the Litigation;
- (f) the Monitor has elected to respond to the leave motions on behalf of the Applicants and is represented by independent counsel;
- (g) Rule 15.04 of the *Rules of Civil Procedure* and Section 11 of the *Companies' Creditors Arrangement Act*; and
- (h) such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) Affidavit of Linc A. Rogers sworn April 28, 2010 and the exhibits attached thereto; and
- (b) such further and other evidence as counsel may advise and this Honourable Court permit.

Date: April 28, 2010

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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.

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

NOTICE OF MOTION

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TAB 2

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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Applicants

AFFIDAVIT OF LINC A. ROGERS

I, **LINC A. ROGERS**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner of the law firm Blake, Cassels & Graydon LLP ("Blakes"), lawyers for the Applicants, and as such have knowledge of the matters hereinafter deposed to. Where this Affidavit is not based on knowledge, it is based on information or belief and I verily believe it to be true and I have indicated the source of such information and belief.

2. Pursuant to an Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 (the "Initial Order") the Applicants obtained relief pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). FTI Consulting Canada ULC was appointed as Monitor in respect of these proceedings. A true copy of the Initial Order is attached hereto as Exhibit "A".

3. On July 31, 2009, the Applicants completed a successful restructuring through a going concern sale of their business and assets. At the closing of the transaction, the directors and officers of the Applicants resigned. Following the resignations, the U.S. parent of the

operating entity, Indalex Limited, exercised control of the Applicants through a unanimous shareholder declaration. The shareholder, however, subsequently became subject to proceedings under Chapter 7 of the U.S. Bankruptcy Code, and a trustee in bankruptcy was appointed over the U.S. parent. As a result of the U.S. parent's bankruptcy, no one was available to provide instructions to Blakes.

4. In order to fill the corporate governance void, pursuant to the Order of the Honourable Mr. Justice Morawetz dated October 27, 2009 (the "Monitor Order"), the Monitor was granted certain increased powers, relating to the matters that remain to be completed in respect of these proceedings and the sale, including the holding and distribution of the proceeds of sale. Attached hereto as Exhibit "**B**" is a true copy of the Monitor Order. Attached hereto as Exhibit "**C**" is a copy of the Tenth Report of the Monitor outlining the background to the issuance of the Monitor Order. Attached hereto as Exhibit "**D**" is a copy of the Twelfth Report of the Monitor dated April 28, 2010, filed in support of a motion to be heard on May 4, 2010 which provides a status update of the CCAA proceedings to that date.

5. Other than the determination and resolution of claims, which is being overseen by the Monitor, the only material matter remaining, following close of the sale transaction was responding to the motions seeking leave to appeal a decision of Mr. Justice Campbell dated February 18, 2010. Leave is being sought by the United Steelworkers and certain retired executives of Indalex Limited. Pursuant to its authority under the Monitor Order, the Monitor has elected to respond to the leave motions on behalf of the Applicants, and in the event leave is granted, to the appeal.

6. In summary, the Applicants have completed a successful restructuring by selling all of their assets and are no longer carrying on business; the Applicants' insolvent estates are being administered by the Monitor pursuant to the Monitor Order; and, the Monitor has elected to respond to the leave motions on behalf of the Applicants. With no one remaining at the Applicants to provide it instructions, Blakes respectfully requests that it be removed as lawyers of record for the Applicants.

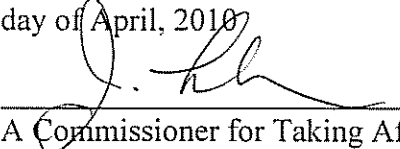
7. To the extent that matters remain to be completed in these proceedings on behalf of the Applicants, the Monitor is empowered to deal with such matters with assistance from its

independent counsel, Stikeman Elliott LLP. It is therefore requested that the Court dispense with the requirement for the Applicants to appoint new counsel or obtain leave to be represented by a person other than a lawyer.

8. Pursuant to the Initial Order, Blakes, in its capacity as counsel to the Applicants, is entitled to the benefit of an Administrative Charge in the assets of the Applicants in respect of its fees and disbursements incurred in connection with these proceedings. Blakes requests as a term of the Order sought, that it continue to have the benefit of the Administrative Charge in respect of fees incurred prior to or subsequent to the date of the Order relating to these proceedings, notwithstanding it no longer remains on record. To the extent that fees may be incurred subsequent to the issuance of the requested Order, this shall only be to the extent that the Monitor or its counsel has authorized the incurring of such fees or disbursements.

9. This affidavit is therefore sworn in support of a motion for an order removing Blakes as lawyers of record for the Applicants and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Toronto, this 28th)
day of April, 2010)



A Commissioner for Taking Affidavits



LINC A. ROGERS

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF LINC A. ROGERS
Sworn April 28, 2010**

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Lawyers for the Applicants

TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE
)
JUSTICE MORAWETZ) 12th DAY OF MAY, 2009



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. (the "Applicants")

AMENDED AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day at
330 University Avenue, Toronto, Ontario.

WHEREAS AN INITIAL ORDER in this matter was issued on April 3, 2009, which
order was subsequently amended and restated by an order dated April 8, 2009, and such order is
hereby further amended and restated.

ON READING the affidavit of Timothy R.J. Stubbs sworn April 3, 2009 and the Exhibits
thereto, the supplemental affidavit of Patrick Lawlor sworn April 8, 2009 and the Exhibits
thereto, (the "Supplemental Affidavit"), the affidavit of Michelle Schwartzberg sworn May 6,
2009 and the Exhibits thereto, the pre-filing report of FTI Consulting Canada ULC ("FTI
Canada" or the "Monitor") in its capacity as proposed Monitor and the First Report of the
Monitor for the Applicants, and on hearing the submissions of counsel for the Applicants,
counsel for the Monitor, and counsel for the DIP Agent, JPMorgan Chase Bank, N.A. ("JPM")

under the Prepetition Credit Agreement (in such capacity, the "Prepetition Agent") and as administrative agent for the proposed DIP Lenders (in such capacity, the "DIP Agent"), and on reading the consent of FTI Canada to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement with respect to one or more of the Applicants (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"): Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants are authorized and directed to remit to the DIP Agent immediately upon the Applicants' receipt thereof or otherwise in accordance with the Applicants' current practices all cash, monies and collection of account receivables and other book debts (collectively, "Cash Collateral") in its possession or control and all Cash Collateral so remitted shall be applied in accordance with the DIP Documents. The DIP Agent is hereby authorized, as of the Effective Date (as defined in the DIP Credit Agreement, as defined below), to (i) send a notice to each Receivables Account Bank (as defined in the Canadian Security Agreement referred to in the DIP Credit Agreement) to commence a period during which the applicable Receivables Account Bank shall cease complying with any instructions originated by any applicable Applicant and shall comply with instructions originated by the DIP Agent directing dispositions of funds, without further consent of the applicable Applicant, and (ii) apply (and allocate) the funds in each Receivables Account (as defined in the Canadian Security Agreement referred to in the DIP Credit Agreement) pursuant to sections 2.09(d) of the DIP Credit Agreement without further order or approval of this Court. Each Receivables Account Bank is hereby authorized to comply with any instructions originated by the DIP Agent on or after the Effective Date directing disposition of funds, without further consent of the applicable Applicant or further order or approval of this Court, and is further authorized to comply with any instructions delivered by the DIP Agent or JPM in its capacity as Prepetition Agent under that certain Credit Agreement among, *inter alia*, the Applicants, dated May 21, 2008 as amended from time to time (the "Prepetition Credit Agreement") to such Receivables Account Bank prior to the Effective Date directing disposition of funds, without further consent of the applicable Applicant or further order or approval of this Court. As of the Effective Date, each "Deposit Account Control Agreement" and "Receivables Account Control Agreement" (as each such term is defined in the Domestic Security Agreement or the Canadian Security Agreement referred to in the Prepetition Credit Agreement) will continue and remain in full force and effect, in each case substituting the Prepetition Agent as the secured party thereunder with the DIP Agent. The Applicants shall maintain their cash management and accounts receivable collection system (the "Cash Management System") in existence prior to the date of this Order, including the Collateral Accounts (as defined below) associated therewith. Each Receivable Account Bank shall not be under any obligation whatsoever to inquire into the propriety validity, or legality of any transfer, payment, collection, or other action taken under this paragraph, or as to the use or application by

the Applicants of funds transferred, paid, collected, or otherwise dealt with in accordance with this paragraph, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of this paragraph or any documentation applicable to the Cash Management System, and shall be, in its capacity as a Receivable Account Bank, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. [RESERVED]

7. THIS COURT ORDERS that subject to the terms of the DIP Documents (as defined below), the Applicants shall be entitled to but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages and salaries (for greater certainty wages and salaries shall not include severance or termination pay), employee and pension benefits, current service contributions to pension plans (which for greater certainty shall not include special payments) vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and pursuant to the terms and conditions of the DIP Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

- (b) payment for goods or services actually supplied to the Applicants following the date of this Order; and
- (c) with the consent of the Monitor, in consultation with the DIP Lenders or their financial advisors, costs and expenses incurred prior to the date of this Order, up to the maximum amount approved by the DIP Lenders pursuant to the DIP Credit Agreement, where in the opinion of the Applicants and the Monitor such payments (i) are necessary to preserve the Property, Business and/or ongoing operations of the Applicants and (ii) can be made on such terms and conditions as will provide a material benefit to the Applicants and their stakeholders as a whole.

9. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) current service ("normal cost") contributions to pension plans when due (which, for greater certainty, shall not include special payments);
- (c) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. THIS COURT ORDERS that until such time as an Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 12(c) of this Order (a "Notice of Repudiation"), the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicant shall pay all Rent due for the notice period stipulated in paragraph 12(c) of this Order, to the extent that Rent for such period has not already been paid.

11. THIS COURT ORDERS that, except as specifically permitted herein and the DIP Documents or with the consent of the Monitor and the DIP Agent, the Applicants are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; provided, however, that the Applicants shall make all such payments under the Prepetition Credit Agreement as required pursuant to the terms of the DIP Documents and contemplated in the Applicants' cash flow projections and budget approved by the DIP Agent;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. THIS COURT ORDERS that the Applicants shall, subject to such covenants as may be contained in the DIP Documents (as hereinafter defined), have the right to:

- (a) with the consent of the Monitor and the DIP Agent, permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate, subject to paragraph 12(c) if applicable;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 13 and 14, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, other than collective agreements, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

13. THIS COURT ORDERS that each Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 12(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 12(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. THIS COURT ORDERS that until and including May 1, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written

consent of the applicable Applicant, the Monitor and the DIP Agent, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the relevant Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, employee benefits, transportation, services, utility or other services to the Business or an Applicant (including, where a notice of termination may have been given with an effective date after the date of this Order), are hereby restrained until further Order of this Court from discontinuing, altering,

interfering with or terminating the supply of such goods or services as may be required by an Applicant, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of an Applicant with respect to any claim against the directors or officers that arose before or after the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed in respect of the Applicant, is sanctioned by this Court or is refused by the relevant creditors or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that the Applicants shall indemnify their respective directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b), 9(c) and 9(d) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with

respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of U.S.\$3,300,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 42 and 45 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order, or the insurer fails to fund defence costs on a timely basis; provided, however, any defence costs paid in respect of the same claim by the insurer shall first be used to reimburse the amounts paid under this paragraph to fund such costs.

APPOINTMENT OF MONITOR

24. THIS COURT ORDERS that FTI Canada is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their respective shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;

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- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Agent and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and any reporting required by the DIP Agent, which information shall be reviewed with the Monitor and delivered to the DIP Agent and its counsel on a periodic basis, as agreed to by the DIP Agent;
- (e) advise the Applicants in their development of any one or more Plans and any amendments to such Plan or Plans;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on any Plan or Plans;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to the Monitor as may be necessary to perform its duties hereunder;
- (i) be at liberty to act as a Foreign Representative in any foreign proceedings in respect of the Applicants;

- (j) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;
- (k) advise and assist the Applicants, as requested in its negotiations with suppliers, customers, creditors and other stakeholders; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

26. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. THIS COURT ORDERS that the Monitor shall provide the DIP Agent and any other creditor of an Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by an Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the relevant Applicant may agree.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and counsel for the Applicants' directors and officers shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$50,000, each, respectively, and a retainer to counsel for the Applicants' directors and officers in the amount of \$20,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and counsel for the Applicants' directors and officers shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of U.S.\$500,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 42 and 45 hereof.

DIP FINANCING

33. THIS COURT ORDERS that the Canadian Subsidiary Borrower (as defined in the DIP Credit Agreement) is hereby authorized and empowered to obtain, borrow and repay under a credit facility pursuant to an agreement, substantially in the form of Exhibit "D" to the Supplemental Affidavit (subject to such non-material amendments thereto as may be consented to in advance to the Monitor) (the "DIP Credit Agreement") among the Applicants, Indalex Holdings Finance, Inc., Indalex Holding Corp., the non-Applicant affiliates party thereto, the lenders party thereto (the "DIP Lenders") and the DIP Agent as administrative agent for the purposes set out in the DIP Credit Agreement provided that the aggregate principal amount of the borrowings by the Applicants under such credit facility outstanding at any time shall not exceed a sub-facility in the amount of U.S. \$24,360,000 and shall be made in accordance with the terms of the DIP Loan Documents.

34. THIS COURT ORDERS that the Applicants other than Indalex Limited are hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the Canadian Obligations under the DIP Credit Agreement (as those are defined in the DIP Credit Agreement).

35. [RESERVED]

36. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the "Secured Obligations" subject to and in accordance with the DIP Credit Agreement (as those terms are defined in the DIP Credit Agreement).

37. THIS COURT ORDERS that notwithstanding paragraph 36, the guarantee by the Applicants of the Secured Obligations under the DIP Credit Agreement in an amount equal to the amount of any reduction of the U.S. Revolving Exposure (as defined in the Prepetition Credit Agreement) plus the amount of the Swap Obligations (as defined in the DIP Credit Agreement) after the Effective Date shall not be enforceable only to the extent that this Court issues an order

declaring that any guarantee given by the Applicants and any security granted by the Applicants related to such guarantee in respect of the U.S. Guaranteed Obligations under the Prepetition Credit Agreement is voidable or not valid, not binding or not enforceable, provided, however, that the guarantee granted by the Applicants under the DIP Credit Agreement as to all other amounts constituting Secured Obligations under the DIP Credit Agreement is hereby deemed to be fully enforceable as against the Applicants and third parties, including any trustee in bankruptcy appointed in respect of any of the Applicants.

38. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver the DIP Credit Agreement and such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Credit Documents or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and subject to paragraph 37, the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders and the DIP Agent under and pursuant to the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

39. THIS COURT ORDERS that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lenders Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lenders under the DIP Documents. The DIP Lenders Charge shall have the priority set out in paragraphs 42 and 45 hereof.

40. THIS COURT ORDERS that, notwithstanding any other provision of this Order, but subject to paragraph 37:

- (a) the DIP Agent and the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Agent and the DIP Lenders Charge or any of the DIP Documents;
- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lenders Charge, the DIP Agent, on behalf of the DIP Lenders, upon three business

days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to DIP Documents and the DIP Lenders Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the DIP Documents or the DIP Lenders Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for bankruptcy orders against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Lenders, upon three business days notice to the Applicants and the Monitor, shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lenders in accordance with the DIP Documents and the DIP Lenders Charge, but subject to the priorities as set out in paragraphs 42 and 45 of this Order; and

- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

41. THIS COURT ORDERS AND DECLARES that, unless otherwise agreed, the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

42. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge and the DIP Lenders Charge, as among them, shall be as follows:

First – Administration Charge;

Second – Directors' Charge (up to a maximum amount of U.S.\$1.0 million);

Third – DIP Lenders Charge; and

Fourth – Directors Charge (for the balance thereof, being U.S.\$2.3 million).

43. THIS COURT ORDERS that any distribution in respect of the DIP Lenders Charge as amongst the beneficiaries thereto shall be governed by the DIP Documents.

44. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors' Charge or the DIP Lenders Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. THIS COURT ORDERS that each of the Administration Charge, the Directors' Charge and the DIP Lenders Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

46. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge the Administration Charge or the DIP Lenders Charge, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Agent and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

47. THIS COURT ORDERS that subject to paragraph 37, the Directors' Charge, the Administration Charge, the DIP Documents and the DIP Lenders Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any

assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicants pursuant to this Order or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

48. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Applicant's interest in such real property leases.

SERVICE AND NOTICE

49. THIS COURT ORDERS that the Applicants shall, within ten (10) business days of the date of entry of this Order, send notice of this Order to their known creditors, other than employees and creditors to which the Applicants owe less than \$5000, at their addresses as they appear on the Applicants' records, advising that such creditor may obtain a copy of this Order on the internet at the website of the Monitor, <http://cfcanada.fticonsulting.com/indalex> (the "Website") and, if such creditor is unable to obtain it by that means, such creditor may obtain a copy from the Monitor. The Monitor shall promptly send a copy of this Order to any interested

Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

50. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Website.

GENERAL

52. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

53. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

54. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

55. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.


56. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided however, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the DIP Credit Agreement up to and including the date this Order may be varied or amended.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 12 2009

PER / PAR: 

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

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

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. (the Applicants)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AMENDED AND RESTATED INITIAL
ORDER**

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Lawyers for the Applicants

TAB B

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



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

THE HONOURABLE MR.

JUSTICE MORAWETZ

) TUESDAY, THE 27TH DAY
)
) OF OCTOBER, 2009

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
(Increase to Monitor's Powers and 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 advice and directions concerning an increase to the powers of the Monitor and an order extending the Stay Period (as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Eighth Report of the Monitor dated July 28, 2009 (the "**Eighth Report**"), the Ninth Report of the Monitor dated August 26, 2009 (the "**Ninth Report**") and the Tenth Report of the Monitor dated October 21, 2009 (the "**Tenth Report**"), and on hearing the

submissions of counsel to the Monitor, the Applicants 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, if necessary, 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.

PAYMENTS TO MONITOR

2. **THIS COURT ORDERS** that the Applicants are authorized and directed to (a) transfer, direct and pay over to the Monitor forthwith and in any event by no later than 4:00 p.m. EST on October 30, 2009, all monies currently held in accounts in the name of and/or controlled by the Applicants; and (b) transfer, direct and pay over to the Monitor forthwith all monies received by the Applicants after the date hereof (all such monies, together with any monies received by the Monitor on behalf of the Applicants, the "Funds"), which Funds shall continue to be Property (as defined in the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 (the "Amended Amended and Restated Initial Order")) of the Applicants.

3. **THIS COURT ORDERS** that all Persons (as defined in the Amended Amended and Restated Initial Order) in possession or control of Property (as defined in the Amended Amended and Restated Initial Order), including for greater certainty any monies, belonging to or owed to the Applicants shall forthwith advise the Monitor of such and shall grant immediate and continued access to the Property to the Monitor, and shall forthwith deliver all such Property to the Monitor upon the Monitor's request, other than documents or information which may not be disclosed

or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

4. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge and the DIP Lenders Charge shall continue to apply to the Property of the Applicants, including but not limited to the Sale Proceeds (as defined in the Approval and Vesting Order of the Honourable Mr. Justice Campbell dated July 20, 2009 (the "Approval and Vesting Order")) and the Funds in accordance with their priority as established by the Amended Amended and Restated Initial Order.

POWERS OF THE MONITOR

5. **THIS COURT ORDERS** that the Monitor shall continue to be authorized and directed (a) to complete the Claims Procedure established by the Claims Procedure Order of the Honourable Mr. Justice Morawetz dated July 30, 2009 (the "Claims Procedure Order") without consulting with the Applicants; and (b) to take such further steps and seek such amendments to the Claims Procedure Orders or additional orders as the Monitor considers necessary or appropriate in order to fully determine, resolve or deal with any Claims or D&O Claims (as both are defined in the Claims Procedure Order); provided that the procedure for the evaluation and adjudication of D&O Claims shall be developed in consultation with D&O Counsel (as defined in the Claims Procedure Order).

6. **THIS COURT ORDERS** that the Monitor shall continue to be authorized and directed, in the name of and on behalf of the Applicants, and without consultation with the Applicants (a) to take such steps as the Monitor considers necessary or appropriate to complete the transaction contemplated by the agreement of purchase and sale among Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc., Indalex Limited, Indalex Holdings (B.C.) Ltd. and 6326765 Canada Inc. and SAPA Holding AB made as of June 16, 2009 (the "Sapa Transaction"), including the working capital adjustment

provided for therein; and (b) to make any disbursements and pay any costs or expenses as may be incidental to or necessary for the closing of the Sapa Transaction.

7. **THIS COURT ORDERS** that the Monitor is authorized, but not required, in the name of and on behalf of the Applicants, to (a) file any and all tax returns of the Applicants with any governmental tax authority that the Monitor considers necessary or desirable; (b) claim any and all rebates, refunds or other amounts of tax (including sales taxes, capital taxes and income taxes) paid by or payable to the Applicants; (c) exercise any rights and remedies available to the Applicants, including all rights of appeal; and (d) engage, deal, communicate, negotiate, agree and settle with any and all governmental tax authorities on behalf of the Applicants and all such governmental authorities shall treat the Monitor as the authorized representative of the Applicants. Any rebates, refunds or other amounts received by the Monitor on account of taxes paid by or payable to the Applicants shall form part of the Funds.

8. **THIS COURT ORDERS** that the Monitor shall be at liberty to engage such persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

9. **THIS COURT ORDERS** that, in addition to its prescribed rights in the CCAA, the powers granted by the Amended Amended and Restated Initial Order, this Order and all other orders granted in these proceedings, the Monitor is empowered and authorized to take such additional actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary or desirable in order to facilitate the orderly completion of these proceedings and the winding up of the Applicants' estates, including:

- (a) Responding to the leave to appeal motion of the Retired Executives (as defined in the Ninth Report) and any resulting appeal;

- (b) Any matters resulting from the pending decision of the Honourable Mr. Justice Campbell in relation to the Deemed Trust Motions and the Bankruptcy Leave Motion (as those terms are defined in the Ninth Report), including the filing of or responding to any appeal there from and the filing of any assignment in bankruptcy of any Applicant; and
 - (c) Investigating the possibility of a restructuring transaction based on the Applicants' tax loss attributes.
10. **THIS COURT ORDERS** that the Monitor shall continue to hold the Sale Proceeds and the Funds, and the Monitor is authorized and directed:
- (a) To comply with its obligations under paragraph 14 of the Approval and Vesting Order;
 - (b) To pay the reasonable fees and disbursements of the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the Applicants' directors and officers, in the name of and on behalf of the Applicants;
 - (c) To pay all post-filing liabilities properly incurred by the Applicants in the ordinary course of business which have not been previously paid or assumed pursuant to the Transaction, in the name of and on behalf of the Applicants;
 - (d) To pay all costs associated with any actions taken by the Monitor pursuant to paragraph 9 of this Order; and
 - (e) To return to Court in order to seek such further authority or directions as the Monitor considers appropriate with respect to the distribution of the Sale Proceeds and the Funds.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA, any other applicable legislation or any other order granted in these proceedings.

12. **THIS COURT ORDERS** that, except as specifically provided for herein, nothing in this Order shall vary or amend any order or endorsement previously granted in these proceedings.

MONITOR'S ACTIVITIES

13. **THIS COURT ORDERS** that the Eighth Report, the Ninth Report and Tenth Report and the activities of the Monitor as described therein are hereby approved.

STAY EXTENSION

14. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Amended Amended and Restated Initial Order, and as extended by Orders granted on April 22, June 19, July 20 and July 30, 2009) is further extended until and including February 5, 2010.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 27 2009

PER / PAR: TV



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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Lawyers for the FTI Consulting Canada ULC

TAB C

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

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

**TENTH REPORT OF THE MONITOR
October 21, 2009**

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.

**TENTH 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 has been assigned to Judge Walsh.

3. On April 8, 2009, the Honourable Mr. 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 currently expires October 30, 2009 pursuant to the Order of the Honourable Mr. Justice Campbell granted July 30, 2009.

5. On April 22, 2009, the Honourable Mr. 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, the Honourable Mr. 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 the Honourable Mr 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 current and former directors and officers of the Applicants (the “**Claims Procedure**”) was approved pursuant to the Order of the Honourable Mr Justice Campbell.

- 9. The Sapa Transaction closed in Canada and the U.S. on July 31, 2009.

- 10. The purpose of this, the Monitor’s Tenth Report, is to inform the Court on the following:
 - (a) The motion filed by the Retired Executives for an extension of the period to file their motion record and factum for leave to appeal the decision of the Honourable Mr. Justice Morawetz dismissing the Retired Executives’ motion seeking an order requiring the Applicants to reinstate payments under the supplemental executive retirement plan (the “**SERP Extension Motion**”);

 - (b) An update on the status of the Deemed Trust Motions and the Bankruptcy Leave Motion, which are described in the Ninth Report of the Monitor;

- (c) The granting of an Order by the US Court converting the Ch.11 Proceedings to proceedings under Chapter 7 of the USBC (the “Ch.7 Proceedings”); and
- (d) The Monitor’s motion for advice and directions regarding:
 - (i) An expansion of the Monitor’s powers in order to facilitate the completion of the CCAA Proceedings; and
 - (ii) An extension of the Stay Period for approximately three months to February 5, 2010.

11. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants’ books and records, certain financial information prepared by the Applicants and discussions with the Applicants’ management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.

12. 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/>.

THE SERP EXTENSION MOTION

13. On July 2, 2009, the Retired Executives brought a motion before the Honourable Mr. Justice Morawetz seeking an order requiring the Applicants to reinstate payment of certain supplemental pension benefits (the “SERP Payments”)

retroactive to April 2009. Justice Morawetz found, *inter alia*, that (a) the SERP Payments are pre-filing unsecured obligations; (b) breach of the obligation to make the SERP Payments gives rise to an unsecured claim; and (c) the Retired Executives are stayed from enforcing these payment obligations.

14. On July 17, 2009, the Retired Executives filed a Notice of Motion with the Ontario Court of Appeal seeking leave to appeal the decision of Justice Morawetz.
15. On September 17, 2009, the Registrar of the Court of Appeal issued a Notice of Intention to Dismiss for Delay if the moving party's motion record and factum are not filed by October 2, 2009.
16. On October 2, 2009, the Retired Executives filed a motion, returnable October 22, 2009, seeking an order extending the time to file their motion record and factum to the date which is 30 days after the Court of Appeal releases its decision in the *Nortel Networks Corp.* matter, bearing Court of Appeal file numbers M37770 and M37771 (the "Nortel Appeal"), which was heard by the Court of Appeal on October 1, 2009.
17. Counsel to the Monitor and counsel to the Applicants discussed the motion with counsel to the Retired Executives and the Applicants and the Monitor, among others, have consented to an extension to the date that is 14 days after the Court of Appeal releases its decision in the Nortel Appeal.

DEEMED TRUST MOTIONS AND BANKRUPTCY LEAVE MOTION

18. On August 28, 2009, certain former executives of the Applicants and the United Steelworkers Union brought motions seeking determinations that property of the Applicants is subject to deemed trusts in favour of the beneficiaries of the "Executive Pension Plan" and the "Salaried Pension Plan", respectively.

- 19. 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.
- 20. The motions were heard by the Honourable Mr. Justice Campbell on August 28, 2009. The decision of the Court remains under reserve. As a result, no assignment in bankruptcy has been filed and no trustee in bankruptcy has been appointed in respect of any of the Applicants.

CONVERSION OF THE CH.11 PROCEEDINGS TO CH.7 PROCEEDINGS

- 21. On October 14, 2009, Judge Walsh of the US Court granted an Order converting the Ch.11 Proceedings to Ch.7 Proceedings, effective as of 4:00 p.m. Eastern Time on October 30, 2009 (the "Ch.7 Order"). A copy of the Ch.7 Order is attached hereto as Appendix A.
- 22. As this Honourable Court is aware, proceedings under Chapter 7 of the USBC are analogous to a bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. When the Ch.7 Order become effective, the US Debtors will no longer be "debtors-in-possession" and control of the US Debtors and their estate will pass to the Chapter 7 Trustee.
- 23. Following the closing of the Sapa Transaction, the directors of the Applicants resigned effective July 31, 2009. Since that date, control of the Applicants has been exercised by the US Court-appointed Chief Restructuring Officer of the US Debtors pursuant to a unanimous shareholder declaration. As a result, as of 4:00 p.m. on October 30, 2009, the Applicants will no longer be under the control of the Chief Restructuring Officer.

EXTENSION OF THE MONITOR'S POWERS

24. Pursuant to various Orders issued in the CCAA Proceedings, the Monitor is currently authorized, *inter alia*, to:

- (a) Hold the Sale Proceeds;
- (b) Take such acts and make any disbursements required to give effect to, evidence or document the Sapa Transaction; and
- (c) Pay the fees and disbursements of the Monitor and its counsel and counsel to the Applicants.

25. There remain a number of matters that need to be dealt with in order to complete the CCAA Proceedings, including:

- (a) Finalization of the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction;
- (b) Completion of sales tax audits, collection of sales and other tax refunds currently estimated at approximately Cdn\$1.4 million and filing of future tax returns;
- (c) Payment of any remaining post-filing liabilities, ongoing legal and professional fees and any incidental costs;
- (d) Responding to the Retired Executive's leave to appeal motion and any resulting appeal;
- (e) Any matters resulting from the pending decision of the Honourable Mr. Justice Campbell in relation to the Deemed Trust Motions and the Bankruptcy Leave Motion, including any appeals there from;
- (f) Completion of the Claims Procedure, including resolution of the Sun Claim;
- (g) Investigating the possibility of a restructuring transaction based on the Applicants' tax loss attributes;

- (h) The distribution of the Sale Proceeds and other funds in accordance with legal priorities; and
 - (i) Any other matters arising in relation to the CCAA Proceeding.
26. As the Applicants have no remaining employees or management and the effect of the conversion of the Ch.11 Proceedings to Ch.7 Proceedings is that the Chief Restructuring Officer will no longer control the Applicants or have the authority to instruct their counsel, the Monitor is of the view that it is in the best interests of the Applicants and their stakeholders that the Monitor's powers be expanded to empower the Monitor to take all steps necessary to complete the CCAA Proceedings in an orderly and efficient manner.

EXTENSION OF THE STAY PERIOD

27. The Stay Period currently expires on October 30, 2009. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings. The continuation of the stay of proceedings is necessary to provide for the stability required during that time. Accordingly, the Monitor is seeking an extension of the Stay Period to February 5, 2010.
28. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by such an extension.
29. The Monitor also believes that the Applicants have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
30. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay period to February 5, 2010.

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

Dated this 21st day of October, 2009.

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

Dated this 21st day of October, 2009.

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

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

TENTH REPORT OF THE MONITOR

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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.

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF NANCY THOMPSON
Sworn April , 2010**

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TAB D

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

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

TWELFTH REPORT OF THE MONITOR
April 28, 2010

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.

TWELFTH 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 currently expires May 7, 2010 pursuant to the Order of the Honourable Mr. Justice Campbell granted February 5, 2010.
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 Claim Procedure;
 - (b) Completing the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction;
 - (c) Responding to the leave to appeal motion of the Retired Executives in connection with the SERP Motion and any resulting appeal; and
 - (d) Responding to any matters resulting from the pending decision of Justice Campbell in relation to the Deemed Trust Motions and the Bankruptcy Leave Motion, including the filing of or responding to any appeal there from and the filing of any assignment in bankruptcy of any Applicant.

PURPOSE OF REPORT

12. The purpose of this, the Monitor's Twelfth Report, is to inform the Court on the following:
- (a) The status of the motion for leave to appeal following from the SERP Decision (as defined herein);
 - (b) The status of the Deemed Trust Motions and the Bankruptcy Leave Motion;
 - (c) The secured claim of Sun Indalex Finance, LLC;
 - (d) The status of the Claims Procedure;
 - (e) The status of the SAPA Transaction Working Capital Calculation; and
 - (f) The request for an extension of the Stay Period until August 6, 2010.
13. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's 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://cfcanda.fticonsulting.com/indalex/>.

THE SERP MOTION

15. On July 2, 2009, the Retired Executives brought a motion before Justice Morawetz seeking an order requiring the Applicants to reinstate payment of certain supplemental pension benefits (the "SERP Payments") retroactive to April 2009. Justice Morawetz found, *inter alia*, that (a) the SERP Payments are pre-filing unsecured obligations; (b) breach of the obligation to make the SERP Payments gives rise to an unsecured claim; and (c) the Retired Executives are stayed from enforcing these payment obligations (the "SERP Decision").
16. On July 17, 2009, the Retired Executives filed a Notice of Motion with the Ontario Court of Appeal seeking leave to appeal the SERP Decision. The Retired Executives filed their motion record and factum for the leave to appeal motion on January 13, 2010. The Monitor, on behalf of the Applicants, filed responding material on February 8, 2010. The Retired Executives filed their reply factum on February 18, 2010.
17. On March 24, 2010, the Ontario Court of Appeal denied the Retired Executives' motion for leave to appeal.

DEEMED TRUST MOTIONS AND BANKRUPTCY LEAVE MOTION

18. On August 28, 2009, certain retired executives of the Applicants (the "Retired Executives") and certain members of the United Steelworkers Union (the "USW") brought motions seeking declarations that property of the Applicants is subject to deemed trusts in favour of the beneficiaries of the "Executive Pension Plan" and the "Salaried Pension Plan", respectively (the "Deemed Trust Motions").
19. 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").

20. 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.
21. On March 5, 2010, the Retired Executives and the USW each filed a Notice of Motion for leave to appeal the Deemed Trust Decision. The moving parties filed their motion records, facta and books of authorities on March 24, 2010 and the Monitor, on behalf of the Applicants, filed a responding factum and book of authorities on April 14, 2010. The Retired Executives and the USW filed a joint reply factum on April 21, 2010.
22. A decision on the Retired Executive's and the USW's leave motions is expected before the end of May 2010.

SECURED CLAIM OF SUN INDALEX FINANCE, LLC

23. As reported in the Monitor's Seventh and Eighth Reports, Sun Indalex Finance, LLC ("Sun") advised the Monitor that it intended to file a secured claim against Indalex based upon an alleged cross-guarantee from Indalex (the "Sun Claim"). The Monitor requested that Sun provide details of the Sun Claim. Sun provided such details and filed a Proof of Claim with the Monitor on August 28, 2009.
24. At the time of the Applicants' CCAA filing, the Applicants were parties to an Amended and Restated Credit Agreement dated as of May 21, 2008, among the Applicants, the US Debtors, certain Revolving Lenders, Sun as Term Lender and JP Morgan as Administrative Agent, as amended (the "Credit Agreement").

25. A detailed description of the Credit Agreement, the provision of guarantees and the grant of security pursuant thereto, and the terms of the forbearance described hereinafter is set forth in the affidavit of Timothy R.J. Stubbs sworn April 3, 2009 and filed in support of the CCAA Proceedings. A copy of the Stubbs affidavit is available on the Monitor's Website at: <http://cfcanada.fticonsulting.com/indalex/>.
26. Pursuant to the Credit Agreement, the US Debtors received a \$30 million term loan and had access to a \$200 million revolving credit facility. The Applicants had access to a revolving credit sub-facility of up to \$80 million.
27. The obligations of Indalex under the Credit Agreement were guaranteed by the other Applicants as well as certain of the US Debtors. Indalex's obligations under the Credit Agreement were secured in Canada by a Security Agreement, two Deeds of Hypothec, together with certain other debentures, pledge agreements and security documents (the "Canadian Security"). Prior to March 6, 2009, the obligations of the U.S. borrower under the Credit Agreement were guaranteed by the US Debtors, but not the Applicants.
28. On March 6, 2009, the Applicants and the US Debtors entered into a Forbearance Agreement with the Administrative Agent, the Revolving Lenders and Sun. Pursuant to the Forbearance Agreement, the Applicants, *inter alia*, agreed to grant security in support of the obligations of the US Debtors, including the Term Loan, and the Canadian Security was subsequently amended to give effect to such agreement.
29. The Monitor has reviewed the Sun Claim and is satisfied that the Sun Claim represents a valid secured claim against the Applicants the quantum of which is yet to be determined.

STATUS OF CLAIMS PROCEDURE

30. In accordance with the Claims Procedure, a Proof of Claim and a copy of the Claims Procedure were sent to each Known Creditor on August 4, 2009, the Notice to Creditors was published in the Globe and Mail on August 6, 2009 and in the Wall Street Journal on August 7, 2009, and a copy of the Notice to Creditors was posted on the Monitor's Website.
31. Any person wishing to assert a Claim or D&O Claim (as those terms are defined in the Claims Procedure Order) was required to submit their Proof of Claim or Proof of D&O Claim, with all relevant supporting documentation, by the Claims Bar Date of 5:00 p.m. (Toronto time) on August 28, 2009.
32. A determination as to the validity of unsecured Claims is being held in abeyance pending a determination as to whether there will be funds to distribute to such creditors, which in turn depends on the final adjustments to the Canadian Purchase Price, as discussed later in this report, and on the outcome of the motions for leave to appeal the Deemed Trust Decision.
33. The Monitor received 17 D&O Proofs of Claim by the Claims Bar Date. The Monitor has received no additional D&O Proofs of Claims. The Monitor has reviewed the 17 D&O Proofs of Claim submitted by various individuals, the Official Unsecured Creditors Committee in the Ch.11 Proceedings and Revenue Quebec against the directors and officers of the Applicants, and has discussed the D&O Claims with counsel to those individuals who were directors and officers of the Applicants during the CCAA Proceedings.
34. Based on its review of the D&O Claims filed, the Monitor formed the opinion, subject to the outcome of the Retired Executive's motion for leave to appeal and possible appeal of the SERP Decision, that the D&O Claims are not covered by the Directors' Charge (as defined in the Amended Amended and Restated Initial Order of Justice Morawetz dated May 12, 2009). Now that the motion for leave to appeal the SERP Decision has been dismissed, the Monitor will be bringing a

motion seeking such a declaration and an order releasing the Directors' Charge.

SAPA TRANSACTION WORKING CAPITAL CALCULATION

35. The Sapa Transaction closed in Canada and the U.S. on July 31, 2009. The Canadian Cash Purchase Price paid by the Purchaser was \$30,902,000, subject to further adjustment in accordance with the provisions of the Asset Purchase Agreement. On Closing, the Canadian Cash Purchase Price was disbursed as follows:

	\$
Cure Costs	445,926
Legal & Professional Fees	1,322,010
Repayment of DIP Lending	17,041,392
Canadian Escrow	2,750,000
Reserves held by Monitor	9,342,672
Canadian Cash Purchase Price	30,902,000

36. Pursuant to the Asset Purchase Agreement, the Canadian Cash Purchase Price will be adjusted based on the difference between the amount of the Canadian Current Assets and Canadian Assumed Liabilities as estimated in the Estimated Closing Date Statements and as calculated as at the Closing Date in the Closing Date Statements, subject to a maximum adjustment in the Purchaser's favour equal to the Canadian Escrow amount, being \$2.75 million.

37. The Asset Purchase Agreement provides for a timetable for the determination of adjustments. The timetable has been extended a number of times.

38. The Monitor is authorized and directed by the Monitor's Powers Order to take such steps as the Monitor considers necessary or appropriate to complete the Sapa Transaction, including the working capital adjustment, in the name of and on behalf of the Applicants. Sun is authorized by order of the US Court in the Ch.7 Proceedings to negotiate the working capital adjustments on behalf of the US Sellers.

39. The Monitor and its counsel met with Sapa and Sun and their counsel in New York on December 18, 2009 in an effort to settle the working capital calculations and the final purchase price adjustments. While a settlement was not reached at that time, the foundation of a possible settlement was negotiated. Since that meeting the Monitor and its counsel have continued negotiations with Sun and its counsel and have agreed to a settlement. The settlement remains subject to obtaining the agreement of Sapa and sign off from the US Chapter 7 Trustee. That process is underway and is subject to certain deadlines negotiated between the Monitor and Sun.
40. At this time, the Monitor anticipates that the final working capital adjustment will result in recovery by the Applicants of the entire \$2.75 million deposit currently held in escrow pending completion of the working capital calculation plus an additional amount.

EXTENSION OF THE STAY PERIOD

41. The Stay Period currently expires on May 7, 2010. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including the finalization of the working capital calculation and the final purchase price adjustment pursuant to the Sapa Transaction, dealing with the Directors' Charge, and responding to the appeal of the Deemed Trust Decision should leave to appeal be granted. The continuation of the stay of proceedings is necessary to provide for the stability required during that time. Accordingly, the Monitor is seeking an extension of the Stay Period to August 6, 2010.
42. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by such an extension and that circumstances exist that make an extension of the Stay Period appropriate.
43. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay period to August 6, 2010.

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

Dated this 28th day of April, 2010.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) THURSDAY, THE 29TH DAY
)
JUSTICE CAMPBELL) OF APRIL, 2010

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

ORDER

THIS MOTION made by Blake, Cassels & Graydon LLP ("Blakes"), the lawyers for the Applicants, for an order removing Blakes as lawyers of record, was heard this day in Toronto, Ontario.

ON READING the Notice of Motion and Affidavit of Linc Rogers sworn April 28, 2010, filed, and on hearing the submissions of Blakes,

1. **THIS COURT ORDERS** that Blakes be and is hereby removed as lawyers of record for the Applicants in this proceeding.
2. **THIS COURT ORDERS** that this Order shall forthwith be served on FTI Consulting Canada ULC, in its capacity as Monitor of the Applicants, by sending a copy by regular mail to its lawyer of record, namely:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Ashley John Taylor

and that proof of such service shall be filed with the court.

3. **THIS COURT ORDERS** that service of this Order on the Applicants is hereby dispensed with.

4. **THIS COURT ORDERS** that the requirement for the Applicants to appoint a new lawyer of record by serving a notice under subrule 15.03(2) of the *Rules of Civil Procedure* or obtain and serve an order under subrule 15.01(2) of the *Rules of Civil Procedure* granting leave for the Applicants to be represented by a person other than a lawyer is hereby dispensed with.

5. **THIS COURT ORDERS** that Blakes shall continue to be entitled to the benefit of the Administration Charge (as defined in the Amended Amended and Restated Initial Order dated May 12, 2009) as security for their professional fees and disbursements incurred at the standard rates and charges of Blakes ("Fees and Disbursements") before the making of this order and as security for any Fees and Disbursements incurred by Blakes at the request of or with the authorization of the Monitor after the making of this order.

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

ORDER

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Lawyers for the Applicants

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

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