Court File No.: C52187
Court File No.: C52346
Superior Court File No.: CV-09-8122-00CL

COURT OF APPEAL FOR ONTARIO

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

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
Fax: 416-218-1849
Email: harvey@chaitons.com

George Benchetrit
Tel: 416-218-1141
Fax: 416-218-1841
Email: george@chaitons.com

Lawyers for George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the US Indalex Debtors

TO: **KOSKIE MINSKY LLP**
20 Queen Street West Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew Hatnay
Tel: (416) 595-2083
Fax: (416) 204-2877
Email: ahatnay@kmlaw.ca

Demetrios Yiokaris
Tel: (416) 595-2130
Fax (416) 204 2180
Email: dyiokaris@kmlaw.ca

Lawyers for Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie, Neil Fraser and Fred Granville

TO: **SACK GOLDBLATT MITCHELL LLP**
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Darrell L. Brown
Tel: (416) 979-4050
Fax: (416) 591-7333
Email: dbrown@sgmlaw.com

Lawyer for the United Steelworkers

TO: **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West 199 Bay Street
Toronto, ON M5L 1139

Ashley John Taylor
Tel: (416) 869-5236
Fax: (416) 947-0866
Email: ataylor@stikeman.com

Lesley Mercer
Tel: (41 6) 869-6859
Fax: (416) 947-0866
Email: lmercer@stikeman.com

Lawyers for the Monitor, FTI Consulting Canada ULC

TO: GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, ON M5B 2M6

Brian Empey
Tel: (416) 979-4194
Fax: (416) 979-1234
Email: bempey@goodmans.ca

Fred Myers
Tel: (416) 597-5923
Fax: (416) 979-1234
Email: fmyers@goodmans.ca

Lawyers for Sun Indalex Finance, LLC

TO: FINANCIAL SERVICES COMMISSION OF ONTARIO
Legal Services Branch
5160 Yonge Street
17th Floor, Box 85
Toronto, ON M2N 6L9

Mark Bailey
Tel: (416) 590-7555
Fax: (416) 590-7556
Email: mark.bailey@fsco.gov.on.ca

Lawyer for the Superintendent of Financial Services

TO: CAVALLUZZO HAYES SHILTON McINTYRE & CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 266

Hugh O'Reilly
Tel: (416) 964-5514
Fax: (416) 964-5895
Email: horeilly@cavalluzzo.com

Amanda Darrach
Tel: (416) 964-1115
Fax: (416) 964-5895
Email: adarrach@cavalluzzo.com

Lawyers for Morneau Sobeco Limited Partnership

Court File No.: C52187
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NOTICE OF MOTION

THE PROPOSED INTERVENOR, GEORGE L. MILLER, THE CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATES OF THE US INDALEX DEBTORS (the "US Chapter 7 Trustee"), will bring a motion before the Associate Chief Justice on Monday, November 15, 2010 at 9:30 a.m. at Osgoode Hall, 130 Queen Street West, in Toronto, Ontario..

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

THE MOTION IS FOR:

1. An Order granting leave to the US Chapter 7 Trustee to intervene in these appeals, including the right to file a factum and make oral argument;

2. Costs of the motion payable by the Appellants; and

3. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Summary of Procedural History

1. On March 20, 2009, the parent company of Indalex Limited (**"Indalex"**) and certain US affiliates (collectively, the **"US Debtors"**) commenced proceedings under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court, District of Delaware (the **"US Bankruptcy Court"**).

2. On April 3, 2009, Indalex, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (collectively, the **"Canadian Debtors"**) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the **"CCAA"**). The application was granted and FTI Consulting Canada ULC was appointed as monitor (the **"Monitor"**).

3. On April 8, 2009, Justice Morawetz granted the Amended and Restated Initial Order, which, *inter alia*, authorized Indalex to borrow funds pursuant to a debtor-in-possession (**"DIP"**) credit agreement among the US Debtors, the Canadian Debtors and a syndicate of lenders. The Amended and Restated Initial Order was subsequently amended to correct certain references and typographical errors and to increase the Canadian sub-facility borrowing limit (collectively, the **"Initial Order"**).

4. The Initial Order provides that the Canadian Debtors' obligation to repay their DIP loan is secured by a super-priority charge (the **"DIP Charge"**) in favour of the lenders (the **"DIP Lenders"**). The Initial Order provides that the DIP Charge has priority over all liens and encumbrances, expressly including deemed trusts and statutory liens.

5. The Canadian Debtors' obligation to repay their DIP loan was guaranteed by the US Debtors.

6. The Canadian Debtors and US Debtors jointly sold substantially all of their assets to SAPA Holdings AB in a going concern transaction (the **"Sale Transaction"**) that was approved by an Order made by Justice Campbell dated July 20, 2009 (the **"Approval and Vesting Order"**).

7. The Approval and Vesting Order required that the proceeds of sale from the Sale Transaction be paid to the Monitor. It also directed the Monitor to make a distribution to the DIP Lenders subject to a reserve that the Monitor considered to be appropriate in the circumstances.

8. The Approval and Vesting Order also provided that, to the extent that any indebtedness owing by the Canadian Debtors to the DIP Lenders was satisfied by any of the US Debtors or their affiliates under their guarantee, the US Debtors are subrogated to the rights of the DIP Lenders under the DIP Charge to the extent of such payment.

9. The Sale Transaction closed on July 31, 2009.

10. The available Canadian sale proceeds (net of the Monitor's reserve) were insufficient to re-pay the DIP loan in full. Accordingly, the US Debtors paid US$10,751,247.22 to satisfy the obligations of the Canadian Debtors to the DIP Lenders. Pursuant to the Approval and Vesting Order, the US Debtors are subrogated to the super-priority rights of the DIP Lenders under the DIP Charge for that amount.

Motion Before Justice Campbell

11. At the Court hearing to approve the Sale Transaction, certain retired executives of Indalex (the **"Retirees"**) asserted a deemed trust claim pursuant to the Ontario *Pension Benefits Act* (the **"PBA"**) over the Canadian sale proceeds and requested that $3.2 million, an amount representing an estimate of the wind up deficit in their pension plan (the **"Executive Plan"**), be held in reserve by the Monitor. The United Steelworkers Union (the **"USW"** and together with the Retirees, the **"Appellants"**) reserved its rights with respect to any deemed trust claim it might assert with respect to its members' pension plan (the **"Salaried Plan"** and together with the executive Plan, the **"Plans"**).

12. The Monitor retained in excess of $6.75 million from the proceeds of sale of the assets of the Canadian Debtors, which the Appellants assert are covered by the alleged deemed trusts in priority to the DIP Charge, notwithstanding the terms of the Initial Order which expressly provide that the DIP Charge has priority over all liens and encumbrances, expressly including deemed trusts and statutory liens.

13. The Appellants brought motions asserting their claims for alleged deemed trusts (the **"Deemed Trust Motions"**), which were heard by Justice Campbell on August 28, 2009.

14. Pursuant to Reasons released on February 18, 2010, Justice Campbell dismissed the Deemed Trust Motions.

Appointment of the US Chapter 7 Trustee

15. On October 14, 2009, approximately 2 months after the Deemed Trust Motions were argued, the US Bankruptcy Court entered an Order converting the US Debtors' bankruptcy cases from Chapter 11 of the United States Bankruptcy Code to Chapter 7. On October 30, 2009, the US Chapter 7 Trustee was appointed.

These Appeals

16. These appeals raise the issue (among others) of whether deemed trusts arising under provincial legislation (the PBA), if proven, apply to funds held in reserve by the monitor of an insolvent company in priority to claims of secured creditors, contrary to the scheme of priorities established under federal legislation (the *Bankruptcy and Insolvency Act* and the CCAA), and contrary to orders of the court having jurisdiction over the CCAA proceedings.

17. The US Chapter 7 Trustee has the right to assert and to rely upon the super-priority of the DIP Charge under the Initial Order and the subrogation provisions of the Approval and Vesting Order.

18. Had the US Chapter 7 Trustee been appointed by the time of the Deemed Trust Motions, clearly it would have been made a respondent to the motions as a proper or necessary party, and would have had the opportunity to participate fully as a party thereto.

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Leave to Intervene Should Be Granted

19. If the Appellants are successful on these appeals, there will be insufficient funds available to repay the US Chapter 7 Trustee in full as subrogee and beneficiary of the DIP Charge.

20. Accordingly, the US Chapter 7 Trustee has a direct, substantial and genuine interest in these appeals.

21. The US Chapter 7 Trustee's intervention will not delay or prejudice the determination of the rights of the parties to the appeal. The US Chapter 7 Trustee has confirmed to the other parties that it is prepared to proceed on the basis of the record as it currently exists, that it will file a factum forthwith, and that the time for its oral argument (limited to a maximum of 20 minutes) shall come out of the time allotted to the Respondents.

22. The Respondents are consenting to this motion.

23. The Appellants have already consented to leave to intervene being granted to two other persons in these appeals:

    a. the Superintendent of Financial Services; and

    b. Morneau Sobeco Limited Partnership, as administrator of the Plans.

24. Rules 13.01 and 13.03 of the *Rules of Civil Procedure*.

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

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

1. Affidavit of Amy Casella sworn November 8, 2010.

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

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
Fax: 416-218-1849
Email: harvey@chaitons.com

George Benchetrit
Tel: 416-218-1141
Fax: 416-218-1841
Email: george@chaitons.com

Lawyers for George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the US Indalex Debtors

TO: **KOSKIE MINSKY LLP**
20 Queen Street West Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew Hatnay
Tel: (416) 595-2083
Fax: (416) 204-2877
Email: ahatnay@kmlaw.ca

Demetrios Yiokaris
Tel: (416) 595-2130
Fax (416) 204 2180
Email: dyiokaris@kmlaw.ca

Lawyers for Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie, Neil Fraser and Fred Granville

TO: SACK GOLDBLATT MITCHELL LLP
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Darrell L. Brown
Tel: (416) 979-4050
Fax: (416) 591-7333
Email: dbrown@sgmlaw.com

Lawyer for the United Steelworkers

TO: STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West 199 Bay Street
Toronto, ON M5L 1139

Ashley John Taylor
Tel: (416) 869-5236
Fax: (416) 947-0866
Email: ataylor@stikeman.com

Lesley Mercer
Tel: (41 6) 869-6859
Fax: (416) 947-0866
Email: lmercer@stikeman.com

Lawyers for the Monitor, FTI Consulting Canada ULC

TO: GOODMANS LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, ON M5B 2M6

Brian Empey
Tel: (416) 979-4194
Fax: (416) 979-1234
Email: bempey@goodmans.ca

Fred Myers
Tel: (416) 597-5923
Fax: (416) 979-1234
Email: fmyers@goodmans.ca

Lawyers for Sun Indalex Finance, LLC

TO: FINANCIAL SERVICES COMMISSION OF ONTARIO
Legal Services Branch
5160 Yonge Street
17th Floor, Box 85
Toronto, ON M2N 6L9

Mark Bailey
Tel: (416) 590-7555
Fax: (416) 590-7556
Email: mark.bailey@fsco.gov.on.ca

Lawyer for the Superintendent of Financial Services

TO: CAVALLUZZO HAYES SHILTON McINTYRE & CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 266

Hugh O'Reilly
Tel: (416) 964-5514
Fax: (416) 964-5895
Email: horeilly@cavalluzzo.com

Amanda Darrach
Tel: (416) 964-1115
Fax: (416) 964-5895
Email: adarrach@cavalluzzo.com

Lawyers for Morneau Sobeco Limited Partnership

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Applicants

AFFIDAVIT OF AMY CASELLA

I, Amy Casella, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a legal assistant with the law firm of Chaitons LLP, lawyers for George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the US Indalex Debtors, and as such have knowledge of the matters hereinafter deposed.

2. Attached hereto as exhibits are true copies of the following documents:

Exhibit "A" – Affidavit of Keith Cooper sworn August 24, 2009 in connection with the hearing before Justice Campbell on August 28, 2009

Exhibit "B" – Approval and Vesting Order dated July 20, 2009 (without schedules)

Exhibit "C" – Reasons of Justice Campbell dated February 18, 2010

Exhibit "D" – Order of the U.S. Bankruptcy Court dated October 14, 2009

Exhibit "E" – Letter from Chaitons LLP dated October 29, 2010

Exhibit "F" – Letter from Koskie Minsky LLP dated November 1, 2010

Exhibit "G" – Letter from Chaitons LLP dated November 2, 2010

SWORN before me at the City of Toronto, Province of Ontario, this 8th day of November, 2010

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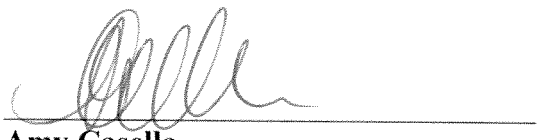
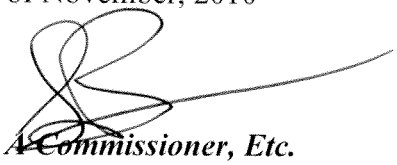
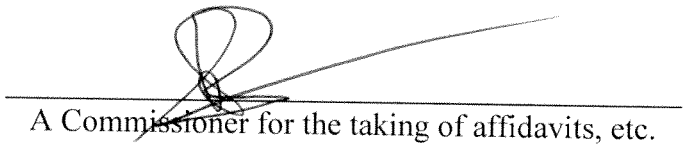


Amy Casella



A Commissioner, Etc.

This is Exhibit "A" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

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.

(the "Applicants")

AFFIDAVIT OF KEITH COOPER

(Sworn August 24, 2009)

I, Keith Cooper, of the City of Atlanta, in the State of Georgia, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Managing Director with FTI Consulting Inc. On March 19, 2009, I was appointed as Chief Restructuring Officer of each of the Applicants' U.S. based affiliates, Indalex Holdings Finance, Inc., Indalex Holding Corp. ("Indalex Holding"), Indalex Inc., Caradon Lebanon, Inc., and Dolton Aluminium Company, Inc. (collectively "Indalex US" and together with the Applicants, "Indalex").

2. Indalex is an interdependent enterprise. Although I did not engage in the day to day management of the Applicants, throughout the course of these proceedings, I have worked closely and cooperatively with the Applicants and the Monitor, in order to achieve a going concern solution for Indalex's business. Accordingly, I have knowledge of the matters deposed to in this affidavit. Where this affidavit is

not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true.

3. This affidavit is sworn in support of the Applicants' motion for an order lifting the stay of proceedings for the purposes of allowing the Applicants to file a voluntary assignment in bankruptcy. It is also sworn supplementary to the affidavit of Bob Kavanaugh sworn August 12, 2009 and in response to the motion of the Retired Executives and the USW (as both terms are defined herein) in connection with their motion requesting, *inter alia*, a declaration that the proceeds from the sale of the Applicants' business is subject to a deemed trust for the benefit of beneficiaries to certain pension plans administered by the Applicants.

BACKGROUND

4. On March 20, 2009, Indalex US commenced reorganization proceedings under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Cases") before the United States Bankruptcy Court for the District of Delaware.

5. On April 3, 2009, the Applicants commenced parallel proceedings and filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to an order (the "Initial Order") of the Honourable Mr. Justice Morawetz.

6. Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants.

7. On April 8, 2009, the Initial Order was amended and restated (the "Amended and Restated Initial Order") to, *inter alia*, authorize the Applicants to exercise certain restructuring powers and authorize Indalex Limited to borrow funds (the "DIP Borrowings") pursuant to a debtor-in-possession credit agreement (as amended, the "DIP Credit Agreement") among Indalex US, the Applicants and a syndicate of lenders (the "DIP Lenders") for which JPMorgan Chase Bank, N.A. is administrative agent (the "DIP Agent").

8. Pursuant to the terms of the Amended and Restated Initial Order, the Applicants' obligation to repay the DIP Borrowings were secured by a Court-ordered charge in priority to all liens and encumbrances, including deemed trusts and statutory liens, other than the "Administration Charge" and the "Directors' Charge".

9. DIP Borrowings were used to fund the working capital needs of the Applicants, including payment of employee wages and benefits, payment of post-filing goods and services and payment of regular course contributions to the Applicants' registered pension plans, among other cost and expenses necessary for the preservation of the Applicants' business and assets. The DIP Credit Agreement contemplated that the DIP Borrowings would be repaid from the proceeds derived from a going concern sale of Indalex's assets, on or before August 1, 2009.

10. The Applicants obligation to repay the DIP Borrowings was guaranteed by Indalex US. The guarantee by Indalex US was a condition to the extension of credit by the DIP Lenders to the Applicants. The DIP Credit Agreement providing for this guarantee was approved by the Court.

11. On April 22, 2009, the Court granted an order which, *inter alia*, extended the stay of proceedings to June 26, 2009, and approved a marketing process (the "Marketing Process") to identify a stalking horse bidder for the assets of the Applicants'. Indalex's assets were marketed in a single, consolidated process.

12. By order dated May 12, 2009, the Court further amended the Amended and Restated Initial Order (now the "Amended Amended and Restated Initial Order"). The Amended Amended and Restated Initial Order is attached hereto as **Exhibit "A"**.

13. By Order dated July 2, 2009, (the "Stalking Horse Order") SAPA Holding AB (including any assignees, "SAPA") was designated as the stalking horse bidder in accordance with the Marketing Process. The Stalking Horse Order also approved bidding procedures to solicit higher and better offers for the Applicants' assets (the "Bidding Procedures"). The asset purchase agreement (the "APA") between

Indalex and SAPA was also designated as a "Qualifying Bid" pursuant to the terms of the Bidding Procedures.

14. The Stalking Horse Order was issued over the objection of a group of eight former executives of Indalex Limited (collectively, the "Former Executives"). The endorsement of Mr. Justice Morawetz issued in connection with the granting of the Stalking Horse Order and the dismissal of the Former Executives' objection is attached hereto as **Exhibit "B"**.

15. The same day of the hearing of the motion seeking the issuance of the Approval and Vesting Order, the Former Executives brought a motion seeking the reinstatement of payments owing to them by Indalex Limited pursuant to a Supplemental Executive Retirement Plan ("SERP"), which payments were suspended by the Applicants immediately following the commencement of the CCAA proceedings. The Former Executives' motion was dismissed by the Court. The endorsement of Mr. Justice Morawetz issued in connection with the dismissal of the Former Executives' motion is attached hereto as **Exhibit "C"**. The Former Executives have sought leave to appeal this decision.

16. As no "Qualifying Bids" were received in accordance with the Bidding Procedures, by Order dated July 20, 2009 (the "Approval and Vesting Order"), the Court approved the sale of the Applicants' assets as a going concern to SAPA, and ordered that upon closing of the SAPA transaction, the proceeds of sale (the "Canadian Sale Proceeds") were to be paid to the Monitor.

17. The Former Executives objected to the granting of the Approval and Vesting Order. The objection was dismissed by the Court.

18. Pursuant to the Approval and Vesting Order, the Monitor was ordered and directed to make a distribution to the DIP Lenders, from the Canadian Sale Proceeds, in satisfaction of the Applicants' obligations to the DIP Lenders, subject to a reserve that the Monitor considered to be appropriate in the circumstances (the "Undistributed Proceeds").

19. At the hearing, the Former Executives, through counsel, advised that they intended to bring a motion before the Court to assert a deemed trust claim over the Canadian Sale Proceeds in respect of the underfunded deficiency owing by Indalex Limited to the Executive Pension Plan, from which the Former Executives receive benefits. The Former Executives requested that an amount of $3.25 million representing their estimate of the underfunded deficiency be included in the amount retained by the Monitor as Undistributed Proceeds. The Monitor agreed to include such amount, in addition to the other amounts retained.

20. The Executive Plan was not at the time of the issuance of the Approval and Vesting Order wound up and it has not been wound up as of the date hereof.

21. The United Steel Workers ("USW"), which represented the Applicants unionized workforce supported the Approval and Vesting Order. The SAPA transaction provided for the assumption of the USW collective agreements by SAPA and the continuation of employment with SAPA of all USW members employed by the Applicants. The USW, however, through counsel, reserved its rights with respect to any deemed trust claim it may have with respect to the Salaried Plan, in which certain USW members participate. I am advised by Bob Kavanaugh, the former Vice-President, Corporate Controller of Indalex Limited, that the Salaried Plan is in the process of being fully wound up with an effective date of December 31, 2006.

22. As a result of the USW's reservation of rights, the Monitor also retained the amount of $3.5 million as part of the Undistributed Proceeds, in addition to other amounts reserved by the Monitor. The total amount retained by the Monitor includes not only amounts relating to the asserted deemed trust claims, but also for amounts relating to the payment of cure costs (provided for under the APA) other costs associated with the completion of the SAPA transaction, legal and professional fees and amounts owing under the DIP Lenders Charge. Of this, $6.75 million represents the amount related to the deemed trust claims. Pursuant to the endorsement of the Honourable Mr. Justice Campbell dated July 20, 2009,

there is no obligation for the Monitor to hold this amount in a separate account, and accordingly, the Monitor has advised that this amount is being held in a general account, commingled with other funds of the estate. The funds in the account will be distributed in accordance with existing and future orders of the Court.

23. The DIP Agent advised Indalex US that to the extent the effect of the Monitor retaining the Undistributed Proceeds was that the Applicants could not repay the DIP Borrowings in full at the closing of the SAPA transaction, the DIP Agent would call on the guarantee granted by Indalex US to satisfy the deficiency.

24. On July 31, 2009, the sale of Indalex's assets to SAPA closed. A total payment of US$17,041,391.80 was made from the Canadian Sale Proceeds by the Monitor, on behalf of the Applicants, to the DIP Agent. As this resulted in a deficiency of US$10,751,247.22, the DIP Agent called on the guarantee granted to the DIP Lenders by Indalex US for the amount of the deficiency (the "Guarantee Payment") and Indalex US has satisfied the obligation of the Applicants.

25. Pursuant to paragraph 14 of the Approval and Vesting Order, Indalex US is fully subrogated to the rights of the DIP Lenders under the DIP Lenders Charge for the amount of the Guarantee Payment.

26. By Order dated July 30, 2009, the Court implemented a claims procedure (the "Claims Procedure") that called for claims against the Applicants and directors of the Applicants, in order to facilitate a determination of entitlement to the Canadian Sale Proceeds.

DEEMED TRUST CLAIM

27. August 28, 2009 was scheduled for the hearing of the deemed trust motion and the Former Executives served and filed their motion record on August 5, 2009, asserting a deemed trust claim over the underfunded deficiency of the Executive Plan.

28. On or about August 5, 2009, the USW filed its motion seeking a deemed trust over the underfunded deficiency of the Salaried Plan.

29. Indalex US has considered its options in light of the allegations and positions set out in the motion records filed by these parties.

VOLUNTARY ASSIGNMENT IN BANKRUPTCY

30. The Applicants and Indalex US strongly dispute the validity of the deemed trust claim, and are of the view that the wind-up liability is an unsecured claim, and any deemed trust, even if it were valid, does not rank in priority to the DIP Lenders Charge.

31. I understand that any purported priority claimed by the USW and the Former Executives (which priority is disputed by the Applicants) is extinguished on bankruptcy. In order to provide conclusive certainty that any purported deemed trust claim does not rank in priority to the DIP Lenders Charge, pursuant to a unanimous shareholder declaration executed by Indalex Limited's immediate parent, Indalex Holding, dated as of July 31, 2009, Indalex Holding has instructed the Applicants to seek approval of the Court to file a voluntary assignment in bankruptcy to ensure that the priority regime set out in the *Bankruptcy and Insolvency Act* (Canada) applies to the distribution of the Canadian Sale Proceeds.

32. While the Claims Procedure was commenced in the within proceedings, at no point in time did the Applicants rule out an eventual filing of a voluntary assignment in bankruptcy.

CORPORATE GOVERNANCE

33. The Applicants are no longer carrying on business, have no active employees and no tangible assets, other than cash (including sale proceeds) and certain tax refunds. The board of directors of the Applicants has resigned and the former directors are all currently employed by SAPA. The Applicants are insolvent shells.

34. The only material obligation remaining by Indalex under the APA is the completion of the post-closing working capital adjustment. $2.75 million is currently being held in escrow by the Monitor, to ensure any adjustment in favour of SAPA will be satisfied with any balance to ultimately be made available to the Applicants' creditors, in accordance with their entitlement and priority.

35. For the reasons set out above, including that the Applicants are insolvent shells and no longer carrying on business, an assignment in bankruptcy is appropriate in the circumstances.

SWORN BEFORE ME at the City of Atlanta, in the State of Georgia this 24th day of August, 2009

Mandy Ann Williams
A NOTARY PUBLIC

KEITH COOPER

Exhibit "A"

This is Exhibit "A" referred to in the Affidavit of
Keith Cooper
Sworn before me this 24th day of
August, 2009.
Mandy Ann Williams
A COMMISSIONER, ETC.

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

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 "CCAA") 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;

(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.

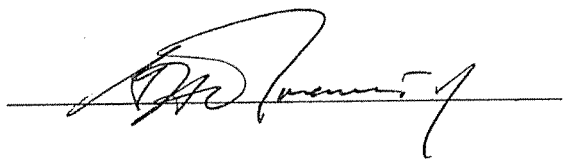
54. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this 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.



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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

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street, Suite 2800
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Linc Rogers LSUC No.: 43562N
Tel: (416) 863-4168

Katherine McEachern LSUC No.: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

Jackie Moher LSUC No.: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants

Exhibit "B"

This is Exhibit "B" referred to in the Affidavit of Keith Cooper Sworn before me this 24th day of August, 2009 Mandy Ann Williams A COMMISSIONER, ETC.

COURT FILE NO.: CV-09-8122-00CL

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

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

Applicants

BEFORE: MORAWETZ J.

COUNSEL: Linc Rogers, Katherine McEachern and Jackie Moher, for the Applicants

Ashley Taylor and Lesley Mercer, for FTI Consulting Canada ULC, Monitor

Paul Macdonald and Jeff Levine, for JPMorgan (DIP Lender)

Kenneth D. Kraft, for SAPA Holding AB

Andrew Hatnay and Demetrios Yiokaris and Andrew Mckinnon, for Keith Carruthers and SERP Retirees

Brian Empey, for Sun Indalex

John D. Leslie, for the U.S. Unsecured Creditors' Committee

G. Finlayson, for U.S. Bank as Trustee for the Noteholders

HEARD: JULY 2, 2009

ENDORSEMENT

[1] The Applicants seek an Order approving the Bidding Procedures as well as an Order deeming the Stalking Horse Bid to be a Qualified Bid pursuant to the Bidding Procedures as well as approval of the Breakup Fee.

[2] The Monitor recommends that the relief be granted. No party, with the exception of Mr. Carruthers and the SERP Retirees, is opposed.

[3] This motion stems directly from the Marketing Process which was approved by the Court on April 22, 2009. The conduct of the Marketing Process is set out both in the Affidavit of Mr. Fazio and in the Monitor's Reports. The Stalking Horse Bid of SAPA Holdings was executed on June 16, 2009. The Notice of Motion was served on June 17, 2009.

[4] The Marketing Process was conducted in both U.S. and Canada. Mr. Rogers advised that the Bidding Procedures were approved, with minor modification, by the U.S. Bankruptcy Court earlier today.

[5] It is also noted that it is a condition precedent to the performance of the Stalking Horse Bidder that the Bidding Procedures be Court approved by today.

[6] Mr. Rogers expressed the view that the Stalking Horse Bid is a worst-case scenario – but that it does represent a "bird in the hand".

[7] This is not a motion to approve the transaction. This issue will be addressed at a future time.

[8] The approval of the Bidding Procedures is opposed by Mr. Hatnay on behalf of certain retirees. Mr. Hatnay requests a 7-day adjournment. That request is problematic in view of the aforementioned condition precedent. The main concern of the retirees is that their position and views have not been considered in this process. The Stalking Horse Bidder is not assuming the pension liabilities. Further, Mr. Hatnay submits that there are a number of unanswered questions relating to both the Executive Pension and the Supplementary Pension.

[9] The position facing the retirees is unfortunate. The retirees are currently not receiving what they bargained for. However, reality cannot be ignored and the nature of the Applicants' insolvency is such that there are insufficient assets to meet its liabilities. The retirees are not alone in this respect. The objective of these proceedings is to achieve the best possible outcome for the stakeholders. In addressing this objective, the Applicants put forth a process – the Marketing Process – which has already been Court approved. No party objected to the previous approval. In my view, the Applicants have adhered to the Court approved process and there is no basis to either delay the consideration of this motion or to give effect to the objection raised by the retirees. To hold otherwise would be to jeopardize the Stalking Horse Bid.

[10] In my view, the issues raised by the retirees do not have any impact on the Bidding Procedures. The issues can be raised by the retirees on any application to approve a transaction – but that is for another day. The *Soundair* principles raised by Mr. Hatnay are more applicable, in my view, to any sale approval motion. For today's motion, the process that is relevant is the Marketing Process as approved on April 22, 2009 which the Applicants have followed.

[11] The Bidding Procedures are therefore approved. The Stalking Horse Bid is deemed to be a Qualifying Bid and the Breakup Fee is approved.

[12] The Monitor filed a Supplement to the Sixth Report. In my view, this document contains confidential information the release of which could be prejudicial to the interests of the Applicants and stakeholders. In my view, it is appropriate to grant a sealing order with respect to this Supplement. The document is to be sealed pending further order.

MORAWETZ J.

DATE: July 2, 2009

Typed Version Released: July 16, 2009

Exhibit "C"

This is Exhibit "C" referred to in the Affidavit of

Keith Cooper

Sworn before me this 24th day of August, 2009

Mandy Ann Williams

A COMMISSIONER, ETC.

COURT FILE NO.: CV-09-8122-00CL
DATE: 20090724

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

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

Applicants

BEFORE: MORAWETZ J.

COUNSEL: Linc Rogers, Katherine McEachern and Jackie Moher, for the Applicants

Ashley Taylor and Lesley Mercer, for FTI Consulting Canada ULC, Monitor

Paul Macdonald and Jeff Levine, for JPMorgan (DIP Lender)

Kenneth D. Kraft, for SAPA Holding AB

Andrew Hatnay and Demetrios Yiokaris and Andrew Mckinnon, for Keith Carruthers and SERP Retirees

B. Empey, for Sun Indalex Finance LLC

John D. Leslie, for the U.S. Unsecured Creditors' Committee

G. Finlayson, for U.S. Bank as Trustee for the Noteholders

HEARD & DECIDED: JULY 2, 2009

ENDORSEMENT

[1] I heard argument in this matter on July 2, 2009 at the conclusion of which I dismissed the motion with reasons to follow. These are those reasons.

[2] Members of the Indalex Supplemental Executive Retirement Plan or "SERP", (referred to collectively as the "SERP Group") brought this motion for an order requiring the Indalex Applicants to reinstate payment of supplemental pension benefits retroactive to April 2009.

[3] The motion is opposed by the Indalex Applicants, the Noteholders and by the DIP Lender. Counsel to the DIP Lender submits that if these payments are made, they would constitute an event of default under the DIP Agreement. Such payments would need the consent or waiver from the DIP Lender which counsel submits, is not forthcoming.

[4] The SERP Group have a contractual entitlement to pension benefits under the Supplemental Retirement Plan for executive employees of Indalex Limited and associated companies (the "Supplemental Plan").

[5] The Supplemental Plan is an unfunded and non-registered supplemental pension plan. Benefits under the Supplemental Plan are paid out of the general revenues of the Indalex Applicants.

[6] Immediately after filing for CCAA protection on April 3, 2009, the Indalex Applicants informed the SERP Group that their supplemental pension benefits were being stopped.

[7] The situation confronting members of the SERP Group is very similar to that faced by certain former employees of Nortel Networks ("Former Nortel Employees") who recently brought a motion requesting an order requiring the Applicants in Nortel's CCAA proceedings (the "Nortel Applicants") to make payments which the Nortel Applicants were contractually obligated to pay to Former Nortel Employees, relating to the Transitional Retirement Allowance and any pension benefit payments Former Nortel Employees were entitled to receive in excess of the pension plan. The motion was dismissed. (See *Nortel Networks Corp., Re 2009* CarswellOnt. 3583).

[8] The reasons provided for the dismissal of the motion of the Former Nortel Employees are applicable to this case.

[9] SERP payments are based on services provided to Indalex prior to April 2009. These obligations are, in my view, pre-filing unsecured obligations. A breach of the SERP payment obligations gives rise to an unsecured claim of the SERP Group against the Indalex Applicants. The SERP Group is stayed from enforcing these payment obligations.

[10] The SERP Group has not established that they are entitled to any priority with respect to their SERP benefits and there is, in my view, no basis in principle, to treat the SERP Group differently than any other unsecured creditors of the Indalex Applicants. The reinstatement of the SERP payments would, in my view, represent an improper re-ordering of the existing priority regime.

[11] The Amended and Restated Order authorizes the Indalex Applicants to pay all reasonable expenses incurred by the Indalex Applicants in carrying on their business in the ordinary course. SERP payments are not, in my view, payments required to carry on the business and, accordingly, the Indalex Applicants are not authorized to pay the monthly SERP payments.

[12] In certain CCAA proceedings, the court has granted relief to permit payment of pre-filing unsecured debt. However, in these cases, such payments have for the most part, been considered to be crucial to the ongoing business of the debtor company. In this case, the Indalex Applicants are seeking a going concern solution for the benefit of all stakeholders and their resources should be used for such purposes. I have not been persuaded that the SERP payments are crucial to the ongoing business of the Indalex Applicants and such payments offer no apparent benefit to the Indalex Applicants. (*Re Nortel, supra,* at paragraphs 80 and 86.)

[13] The SERP Group submits that there are hardship issues that should be taken into account. In Nortel, a hardship exception was made. However, the Nortel exception was predicated, in part, on the reasonable expectation that there will be a meaningful distribution to unsecured creditors, including the Former Nortel Employees. The Nortel hardship exception recognizes that any distribution would represent an advance on the general distribution. The situation facing the Indalex Applicants is different. The Indalex Applicants have significant secured creditors and unlike the situation in Nortel, it is premature to comment on the prospects of any meaningful distribution to unsecured creditors.

[14] Counsel to SERP Group also submitted that CCAA protection in this case had been obtained for a company that was liquidating its assets. Counsel for the SERP Group submitted that Indalex had put itself up for sale and commenced a "marketing process" and as such it was not restructuring, rather, it was selling itself. This led to the submission that the cutting of benefits payable to the SERP Group was not necessary or justified for the sale of the company under the CCAA.

[15] I fail to see the relevance of this submission. At the present time, the Applicants are properly under CCAA protection. No motion has been brought to challenge the appropriateness of the CCAA proceedings and, in my view, nothing in the CCAA precludes the ability of a debtor applicant to sell its assets. See *Re Nortel Networks Corporation* – endorsement released July 23, 2009 on this point.

[16] Finally, counsel to SERP Group placed emphasis on the fact that the amount required to satisfy the obligations to SERP Group is not significant. While this submission may be attractive on the surface, to give effect to this argument would violate a fundamental tenet of insolvency law, namely, that all unsecured creditors receive equal treatment. In my view, there is no basis to prefer the SERP Group or, indeed, any retired executive who is entitled to SERP payments in priority to other unsecured creditors.

[17] Counsel to SERP Group also relied upon *Doman Industries et al* (2004) B.C.S.C. 7333 for the proposition that, the fact that a company can reduce its costs if it can terminate contracts, is not sufficient for a CCAA court to authorize the termination of the contract. In *Doman, supra,* the point at issue concerned licences under the *Forest Act* which created the concept of

replaceable contracts. Doman held certain licences. As noted by Tysoe J. (as he then was), at paragraph 7, a replaceable contract is a form of evergreen contract which contains statutorily mandated provisions, the most important of which is that the licence holder must offer a new or replacement contract to the contractor upon each expiry of the term of the contract as long as the contractor is not in default under the contract. That is not the situation in this case. The contractual situation in *Doman, supra,* is not, in my view, comparable to this case. *Doman* is clearly distinguishable on the facts.

[18] For the forgoing reasons, the motion of SERP Group for reinstatement of SERP benefits is dismissed.

MORAWETZ J.

Heard and Decided: **July 2, 2009**

Typed Version Released: **July 24, 2009**

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INDALEX LIMITED et al.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF KEITH COOPER
(Sworn August 24, 2009)

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Linc Rogers LSUC# 43562N
Tel: (416) 863-4168

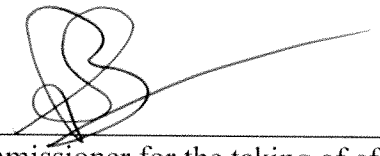
Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566

Jackie Moher LSUC#: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants

053

This is Exhibit "B" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

Court File No. CV-09-8122-00CL 055

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE
	)	
JUSTICE CAMPBELL	)	20th DAY OF JULY, 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.

APPROVAL AND VESTING ORDER

THIS MOTION, made by Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. (collectively, the "Canadian Sellers") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale among Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc., the Canadian Sellers, and SAPA Holding AB (which has assigned all of its rights and obligations thereunder in respect of the Canadian Acquired Assets (as defined in the Sale Agreement) to SAPA Canada Inc.) (the "Canadian Purchaser") made as of June 16, 2009 and appended to the Affidavit of Fred Fazio sworn June 29, 2009, together with such non-material amendments relative to the Applicants as may be consented to by the Monitor (defined below) (the "Sale Agreement") and vesting in the Canadian Purchaser, the Canadian Sellers' right, title and interest in and to the Canadian Acquired Assets, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion and the Seventh Report of the court-appointed monitor, FTI Consulting Canada ULC (the "Monitor") and on hearing the submissions of counsel for the Canadian Sellers, counsel for the Monitor, counsel for the

Canadian Purchaser and counsel for the JPMorgan Chase Bank, N.A., and on being advised that the Canadian Sellers' Service List was served with the Motion Record herein;

APPROVAL AND VESTING

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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Canadian Sellers and its stakeholders. The execution of the Sale Agreement by the Canadian Sellers is hereby authorized and approved, and the Canadian Sellers are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of, or to further evidence or document, the Transaction and for the conveyance of the Canadian Acquired Assets to the Canadian Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Canadian Purchaser substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), and, with respect to the Quebec Property (as defined in Schedule B) only, the execution of a deed of transfer of the Quebec Property by Indalex Limited (being one of the Canadian Sellers), to the Canadian Purchaser in accordance with the Deed of Transfer (hereinafter defined) and, with respect to the Quebec Property only, the execution of the Deed of Mainlevée (as hereinafter defined) in accordance with paragraphs 9 and 10 of this Order, all of the Canadian Sellers' right, title and interest in and to the Canadian Acquired Assets described in the Sale Agreement (including, without limitation, the real and immoveable property described in Schedule B) shall vest absolutely in the Canadian Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), whether such Claims came into existence prior to, subsequent to, or as a result of any previous orders of this Court, contractually, by operation of law or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of

the Honourable Justice Morawetz dated April 3, 2009, as amended and restated; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, including, without limitation, registrations made at the Registry of Personal and Moveable Real Rights in the Province of Quebec; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D (the "Permitted Encumbrances")) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Acquired Assets are hereby expunged and discharged as against the Canadian Acquired Assets. Notwithstanding the foregoing, the Canadian Acquired Assets shall vest in the Canadian Purchaser subject to the Permitted Liens (as both terms are defined in the Sale Agreement);

REAL PROPERTY

(a) Ontario

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) (the "Toronto Land Registry Office) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and the *Land Registration Reform Act* (Ontario) with respect to the Toronto Property (as defined in Schedule B), the Land Registrar for the Toronto Land Registry Office is hereby directed to enter the Canadian Purchaser as the owner of the Toronto Property in fee simple, and is hereby directed to delete and expunge from title to the Toronto Property all of the Claims relating to the Toronto Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the Toronto Property listed in Schedule D.

5. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Peel (No. 43) (the "Mississauga Land Registry Office") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and the *Land Registration Reform Act* (Ontario) with respect to the Mississauga Property (as defined in Schedule B), the Land Registrar for the Mississauga Land Registry Office is hereby directed to enter the Canadian Purchaser as the owner of the Mississauga Property in fee simple, and is hereby directed to delete and expunge from title to the Mississauga Property all of the Claims relating to the

Mississauga Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the Mississauga Property listed in Schedule D.

(b) Alberta

6. THIS COURT ORDERS that, subject to the Permitted Encumbrances relating to the Alberta Property (as defined in Schedule B) listed in Schedule D, upon being presented with an original letter from counsel to the Canadian Sellers, Blake, Cassels & Graydon LLP, directed to the Alberta Land Titles Office confirming receipt of the Canadian Purchase Price (as defined in the Sale Agreement) payable on Closing Date (as defined in the Sale Agreement), and an Affidavit of Value as prescribed by the *Land Titles Act* (Alberta), the Alberta Land Titles Office be and is hereby authorized and directed to cancel the existing certificates of title to the Alberta Property and to issue new certificates of title in the name of the Canadian Purchaser, c/o Heenan Blaikie P.O. Box 185, Suite 2600, 200 Bay Street, South Tower, Royal Bank Plaza, Toronto Ontario, M5J 2J4, as specifically set out in the said letter, and the Alberta Land Titles Office be and is hereby directed to delete and expunge from title to the Alberta Property all of the Claims relating to the Alberta Property, including but not limited to, the Claims listed on Schedule C, subject only to the Permitted Encumbrances relating to the Alberta Property listed in Schedule D.

7. THIS COURT ORDERS that the cancellation of titles and issuance of new titles and discharge of instruments as set out in paragraph 6 shall be registered notwithstanding the requirements of Section 191(1) of the *Land Titles Act* (Alberta).

(c) British Columbia

8. THIS COURT ORDERS that the BC Property (as defined in Schedule B) is hereby conveyed to and vested in the Canadian Purchaser and upon presentation for registration in the Land Title Office for the Land Title District of New Westminster of a certified copy of this Order, the Registrar of Land Titles (the "BC Registrar") is hereby directed to enter the Canadian Purchaser as owner of the BC Property together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licences, rights, covenants, restrictive covenants, commons, ways, profits, privileges, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of BC Property, and this Court, having considered

the interests of third parties, further orders that the BC Registrar is hereby directed to discharge, release, delete and expunge from title to the BC Property all of the Claims relating to the BC Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the BC Property listed in Schedule D, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Canadian Purchaser in and to the BC Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Canadian Purchaser as aforesaid.

(d) Quebec

9. THIS COURT ORDERS AND DIRECTS, in order to give effect to this Order prior to closing of the Transaction, Indalex Limited and the Canadian Purchaser to enter into a deed of transfer with respect to the Quebec Property, upon the same terms and conditions substantially as those set forth in the draft deed of transfer attached hereto as Schedule E (the "Deed of Transfer"), which Deed of Transfer shall be effective only upon the delivery of the Monitor's Certificate to the Canadian Purchaser.

10. THIS COURT ORDERS AND DIRECTS, in order to give effect to this Order prior to closing of the Transaction, JPMorgan Chase Bank, N.A. to execute a deed of mainlevée with respect to the Claims listed in Schedule C relating to only the Quebec Property (the "Deed of Mainlevée"), which Deed of Mainlevée shall be effective only upon the delivery of the Monitor's Certificate to the Canadian Purchaser.

GENERAL PROVISIONS

11. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, proceeds from the sale of the Canadian Acquired Assets, which for clarity shall include, without limitation, all deposits, reserves, holdbacks and adjustments to the Canadian Purchase Price in favour of the Canadian Sellers (as defined in the Sale Agreement) (including amounts released from the Canadian Escrow Amount in accordance with the Sale Agreement), but shall not include the (i) Canadian Escrow Amount, and (ii) the Canadian Sellers' Cure Cost Amount (collectively, the "Sale Proceeds"), shall stand in the place and stead of the Canadian Acquired Assets, and that from and after the delivery of the Monitor's Certificate all Claims and

Encumbrances (other than the Permitted Exceptions and Permitted Liens) shall attach to the Sale Proceeds with the same priority as they had with respect to the Canadian Acquired Assets immediately prior to the sale, as if the Canadian Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

13. THIS COURT ORDERS that immediately following the filing of the Monitor's Certificate, the Monitor shall be authorized and empowered, in the name of and on behalf of the Applicants, (i) to take such acts as the Monitor shall deem necessary and appropriate to further give effect to, evidence or document the Transaction; and, (ii) make any disbursements required in connection with the actions described in (i) hereof and on account of fees and disbursements of the Monitor and its counsel and counsel to the Applicants, with no personal liability to the Monitor in connection therewith.

14. THIS COURT ORDERS AND DIRECTS that on Closing the Sale Proceeds shall be paid to the Monitor on behalf of the Canadian Sellers and on or following the Closing, subject to the Monitor on behalf of the Canadian Sellers, maintaining a reserve of the Sale Proceeds in an amount satisfactory to the Monitor (the "Reserve"), the Monitor on behalf of the Canadian Sellers is hereby authorized and directed, without further Order of the Court, to make one or more distributions (the "Distributions") to JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the "Agent") for and on behalf of the DIP Lenders (as defined in the Amended Amended Restated Initial Order dated May 12, 2009, as further amended, the "Initial Order") in an amount up to the aggregate amount of all primary indebtedness, liabilities and obligations now or hereafter owing by the Canadian Sellers to the DIP Lenders (the "Canadian Obligations"). To the extent that any Canadian Obligations are satisfied by any of the Canadian Sellers' affiliated entities resident in the United States (collectively, "Indalex US") (the "Guarantee Payment") Indalex US shall be entitled to be subrogated to the rights of the Agent and the DIP Lenders under the DIP Lenders Charge (as defined in the Initial Order) to the extent of such Guaranteed Payment and following indefeasible payment in full of the Canadian Obligations, Indalex US shall be entitled to receive any Distributions, pursuant to Indalex US'

subrogation rights under the DIP Lenders Charge, in an amount up to the Guarantee Payment, subject to the Reserve.

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* ("PIPEDA") and pursuant to section 18 of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c P-39.1 (the "Quebec Privacy Act"), and any other similar legislation in the Provinces of British Columbia and Alberta, the Canadian Sellers are authorized and permitted to disclose and transfer to the Canadian Purchaser all human resources and payroll information in the Canadian Sellers' records pertaining to the Canadian Sellers' past and current employees. The Canadian Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects in compliance with the provisions of PIPEDA and the Quebec Privacy Act.

16. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Canadian Sellers and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Canadian Sellers;

the vesting of the Canadian Acquired Assets in the Canadian Purchaser pursuant to this Order and any Distributions made pursuant to paragraph 14 shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Canadian Sellers and shall not be void or voidable by creditors of the relevant Applicant nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

18. 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 Canadian Sellers and its 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 Canadian Sellers, as may be necessary or desirable to give effect to this Order or to assist the Canadian Sellers and their agents in carrying out the terms of this Order.

19. THIS COURT ORDERS AND AUTHORIZES the provisional execution of this Order in the Province of Quebec.

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

JUL 20 2009

PER / PAR:

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-

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

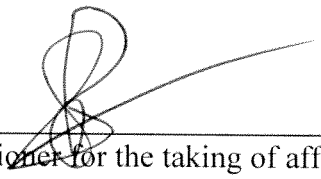
Linc Rogers LSUC No.: 43562N
Tel: (416) 863-4168

Katherine McEachern LSUC No.: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

Jackie Moher LSUC No.: 53166V
Tel: (416) 863-3174
Fax: (416) 863-2653

Lawyers for the Applicants

This is Exhibit "C" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

CITATION: Re Indalex 2010 ONSC 1114
Court File No. 05-CL-5880
Date: 20100218

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. (the "Applicants")

Katherine McEachern, Linc Rogers, J.A. Prestage for the Applicants

Ashley Taylor, Lesley Mercer for the Monitor, FTI Consulting

Andrew Hatnay, Demetrios Yiokaris for various employees

Darrell Brown for the United Steelworkers

Mark Bailey for the Superintendent of Financial Services

Fred Myers, Brian Empey for Sun Indalex Finance, LLC

Heard: July 20 and August 28, 2009

C. CAMPBELL J.:

REASONS FOR DECISION

[1] On July 20, 2009, this Court heard a motion for approval of a sale and for a Vesting Order in a joint cross-border hearing with Justice Walsh of the United States Bankruptcy Court for the District of Delaware.

Background

[2] On March 20, 2009, Indalex US commenced reorganization proceedings under Chapter 11 of Title 11 of the United States Bankruptcy Code before the U.S. Court.

[3] On April 3, 2009, the Applicants commenced parallel proceedings and filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*,

R.S.C. 1985 c. C-36, as amended (the "*CCAA*") pursuant to an order of Morawetz J. (the "Initial Order") Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants.

[4] On April 8, 2009, the Initial Order was amended and restated to, *inter alia*, authorize the Applicants to exercise certain restructuring powers and authorize Indalex Limited to borrow funds (the "DIP Borrowings") pursuant to a debtor-in-possession credit agreement among Indalex US, the Applicants and a syndicate of lenders (the "DIP Lenders") for which JPMorgan Chase Bank, N.A. is administrative agent (the "DIP Agent.")

[5] The Applicants' obligation to repay the DIP Borrowings was guaranteed by Indalex US. The guarantee by Indalex US was a condition to the extension of credit by the DIP Lenders to the Applicants.

[6] On April 22, 2009, this Court granted an Order which, inter alia, extended the stay of proceedings to June 26, 2009, and approved a marketing process.

[7] By Order dated July 20, 2009 (the "Approval and Vesting Order"), this Court approved the sale of the Applicants' assets as a going concern to SAPA Holding AB (including any assignees, "SAPA"), and ordered that upon closing of the SAPA transaction, the proceeds of sale (the "Canadian Sale Proceeds") were to be paid to the Monitor.

[8] Pursuant to the Approval and Vesting Order, the Monitor was ordered and directed to make a distribution to the DIP Lenders, from the Canadian Sale Proceeds, in satisfaction of the Applicants' obligations to the DIP Lenders, subject to a reserve that the Monitor considered to be appropriate in the circumstances (the "Undistributed Proceeds.")

[9] At the sale approval hearing, both the Former Executives and the United Steel Workers (USW) asserted deemed trust claims over the Canadian Sale Proceeds in respect of underfunded pension liabilities in connection with certain pension plans administered by Indalex Limited, and requested that an amount representing their estimate of the under-funded deficiencies be included in the amount retained by the Monitor as Undistributed Proceeds, pending further order of the Court.

[10] As a result of the Former Executives and USW's reservation of rights, the Monitor has retained the amount of $6.75 million as Undistributed Proceeds, in addition to other amounts reserved by the Monitor.

[11] On July 31, 2009, the sale of Indalex's assets to SAPA closed. A total payment of US$17,041,391.80 was made from the Canadian Sale Proceeds by the Monitor, on behalf of the Applicants, to the DIP Agent. As this resulted in a deficiency of US$10,751,247.22 in respect of the DIP Borrowings, the DIP Agent called on the guarantee granted to the DIP Lenders by Indalex US for the amount of the deficiency (the "Guarantee Payment") and Indalex US has satisfied the obligation of the Applicants.

[12] The approval motion was either supported or unopposed by all parties except for an issue raised on behalf of certain retirees under pension plans of the Company. Pursuant to paragraph 14 of the Approval and Vesting Order, Indalex US is fully subrogated to the rights of the DIP Lenders under the DIP Lenders' Charge for the amount of the Guarantee Payment.

[13] Counsel for the retirees objected to the sale on the basis that the liquidation values set forth in the 7th Monitor's Report would, it was suggested, provide greater return for unsecured creditors than would the proposed sale. That objection was dismissed on the basis that there was no clear evidence to support the proposition and in any event the transaction as approved did preserve value for suppliers, customers and preserve approximately 950 jobs of the Applicants' plant employees in Canada.[1]

[14] The second objection by certain retirees and employees involves a claim based on a statutory deemed trust said to be in respect of certain funds held by the Monitor proposed to be reserved from the funds for distribution on closing to the DIP Lenders.

[15] At the July 20, 2009 hearing, the Court expressed concern that the position of the retirees and employees, which was brought only at the time of the approval motion, if it were to be dealt with at all, without an adjournment of the approval hearing, should be dealt with promptly as part of the overall approval process.

[16] Following the submissions of counsel, it was agreed that an expedited hearing process on the retirees' and employees' positions would be undertaken promptly, and that the funds on hand with the Monitor would be sufficient if required to satisfy retirees' alleged trust claims.

[17] The motion in respect of the deemed trust came on for hearing on August 28, 2009. The position of the retirees was opposed by the Applicants and the purchaser. Submissions were also made by counsel for the Superintendent under the Ontario *Pension Benefits Act*, R.S.O. 1990 c. P-8 ("*PBA*.") This decision was then reserved pending the November 26, 2009 ruling of the Court of Appeal rendered in *Sproule v. Nortel Networks Corporation*, reported, 2009 ONCA 833.

[18] There are two groups of retired employees at issue in this matter. Those represented by Mr. Hatnay and his colleagues seek a declaration that the amount of $3.2 million, which represents the wind up liability said to be owing by the Applicants to the Retirement Plan for Executive Employees of Indalex Canada and Associated Companies (the "Executive Plan") and which is currently held in reserve by the Monitor, is subject to the deemed trust for the benefit of the beneficiaries of the Executive Plan under section 57(4) of the *PBA*. The Pensioners further seek an order that such amounts are not distributable to other creditors of the Applicants and are to be paid into the fund of the Executive Plan and that such orders and declarations survive any subsequent bankruptcy of the Applicants.

[19] There were, as of January 1, 2008, eighteen members of the Executive Plan, none of whom are active employees.

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1 Monitor's 7th Report, July 15, 2009, p. 13, paragraphs 34(c)(d)

[20] The second group of pension claimants are members of the United Steel Workers, who seek recovery from the sale proceeds based on deemed trust of a pension plan in wind-up of an amount equal to the deficiency in the Retirement Plan for Salaried Employees of Indalex and Associated Companies ("Salaried Plan.") The deficiency in the Salaried Plan is said to be $1,795,600 as of December 31, 2008.

The Issues

1. Do the deemed trust provisions of s. 57 and s. 75 of the *PBA* apply to the funds currently held in reserve by the Monitor in respect of:
   a. The Executive Plan;
   b. The Salaried Plan?
2. Should the stay currently in place under the *CCAA* be lifted to permit the Applicants to file for bankruptcy under the *BIA*?

[21] There are several differences between the Executive Plan and the Salaried Plan. The Salaried Plan contains both a defined benefit and defined contribution component. Indalex and members of the Salaried Plan were required to make joint contributions to the Salaried Plan.

[22] The Salaried Plan is in the process of being fully wound up with an effective wind-up date of December 31, 2006. No pensions have accrued since that date. The wind-up deficiency in the Salaried Plan at December 31, 2008 was $1,795,600, has been subject to special payments to deal with that deficiency, of $709,013 in 2007, $875,313 in 2008 and $601,000 in 2009, all of which have been made. The last special payment was scheduled to be made on December 31, 2009.

The Executive Plan

[23] The Executive Plan has not been wound up. The material filed with the Court exhibits an intention on the part of the Applicants to wind up that Plan. The uncontested evidence of Bob Kavanagh on behalf of the Applicants in his affidavit sworn August 12, 2009 is to the following effect:

16. Indalex has made all required contributions to the Executive Plan to date and no amounts are currently due or owing to the Executive Plan, including special payments.
17. As at January 1, 2008, the Executive Plan had an estimated deficiency of $2,996,400 determined on a wind-up basis. In 2008, Indalex made total special payments of $897,000 to the Executive Plan. No further special payments are due to be made to the Executive Plan until 2011.
18. If the Executive Plan were to be fully wound up, the funded status of the plan as of the wind-up date could only be determined by an actuarial valuation of the plan performed after the wind-up date once the plan's assets and liabilities have been determined. No actuarial valuation of the Executive Plan has been prepared since the valuation performed with an effective date of January 1, 2008.
19. Sixteen individuals with benefit entitlements under the Executive Plan were last employed by Indalex in Ontario and two individuals with benefit entitlements under the Executive Plan were last employed by Indalex in Alberta.

20. There is currently one member of the Executive Plan who is on long term disability and continues to accrue benefits under the plan.
21. Currently, approximately 80% of the assets of the Executive Plan are invested in fixed income securities and approximately 20% of the assets of the Executive Plan are invested in equities.
22. The market value of the assets of the Executive Plan as at June 30, 2009 was $5,022,940. Attached hereto as Exhibit "C" is a copy of the Statement of Net Assets Available for Benefits as of June 30, 2009.

[24] The affidavit of Keith Carruthers exhibits a letter of July 13, 2009 on behalf of the Monitor confirming the intention of the Applicants to wind up the Executive Plan in accordance with the provisions of the *PBA*. There are no deficiencies in payments under the Executive Plan as of July 20, 2009. The Executive Plan is not wound up. Given the analysis that follows in respect of the Salaried Plan, I see no basis for a deemed trust of any amount at this time in respect of the Executive Plan.

The Salaried Plan

[25] This motion essentially involves one aspect of the Salaried Plan of Indalex, namely the windup deficiency of the said plan. It is the position of the *CCAA* Applicants that prior to the sale of assets approved on July 20, 2009, all pension payments required under obligation to Indalex employees, both statutory and contractual, were met.

[26] What is at issue here is the requirement for an annual deficiency payment that was established to be made when the Salaried Plan was wound up as at December 31, 2006.

[27] The term "wind up" can be a misnomer unless understood in context. When a pension plan is "wound up," at the effective date it means that no new entrants are permitted. An actuarial calculation is then made of the assets to determine whether, based on certain actuarial assumptions, there will be sufficient monies available at the times required to pay the pension entitlement of employees who have and will retire.

[28] If the assets as of the wind-up date are found to be insufficient, that deficiency will be required to be made up under the *PBA*. As in this case, the Plan may be permitted to have the deficiency rectified in a period of up to five years by annual instalments.

[29] The issue for this Court is whether or not under the *PBA* there is a requirement that the deficiency commencing at the wind up date be paid as at the date of closing of the sale and transfer of assets, namely July 20, 2009.

[30] The issue is to be determined by analysis and application of the provisions of the *PBA*. The sections involved are the following:

57.

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of

money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

75

(1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund,
(a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
(b) an amount equal to the amount by which,
(i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Superintendent declares that the Guarantee Fund applies to the pension plan,
(ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
(iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,
exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario. R.S.O. 1990, c. P.8, s. 75 (1); 1997, c. 28, s. 200.

(2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times. R.S.O. 1990, c. P.8, s. 75 (2).

[31] Section 75 of the *PBA* is amplified by sections of the regulations under the statute * * (see R.R.O. 1990 Regulation 909.) Section 28 and the following 144 pages of the Regulation deal with wind-up notices. Section 31(1) and (2) are as follows:

31. (1) The liability to be funded under section 75 of the Act shall be funded by annual special payments commencing at the effective date of the wind up and made by the employer to the pension fund. O. Reg. 712/92, s. 19.

(2) The special payments under subsection (1) for each year shall be at least equal to the greater of,

(a) the amount required in the year to fund the employer's liabilities under section 75 of the Act in equal payments, payable annually in advance, over not more than five years; and

(b) the minimum special payments required for the year in which the plan is wound up, as determined in the reports filed or submitted under sections 3, 4, 5.3, 13 and 14, multiplied by the ratio of the basic Ontario liabilities of the plan to the total of the liabilities and increased liabilities of the plan as determined under clauses 30 (2) (b) and (c). O. Reg. 712/92, s. 19.

[32] The most pertinent of all of these sections are 57(4) and 75(2), as they apply to this windup situation. The submission on behalf of the Superintendent distinguished between the words "due" and "accruing due." The assertion is that the word "accrue" must be given meaning. The meaning suggested is that by virtue of the inclusion of the word "accrue," the remaining deficiency payments become payable since they fall within the deemed trust provisions.

[33] The distinction to be made between amounts that are accruing and amounts that are due is that, in the case of an amount accruing, it is not yet payable, while generally an amount that is due is payable.

[34] The deemed trust provision of s. 57(4) requires the employer to accrue "to the date of the windup but not yet due." The windup in this case is December 31, 2006. In my view the section

contemplates the calculation to be made as of the date of wind-up of the amounts required to make up the deficiency. If, as here, the regulator permits that deficiency to be made up over a period of years, the amount of the yearly payments does not become due until it is required to be paid. It is "payable annually in advance."

[35] In *Re Ganong Estate; Ganong v Belyea*, [1941] S.C.R. 125, it was held:

> ...the words 'all dividends accrued due' can surely only mean dividends which have become payable by the corporation to the shareholder, as the words "dividends accruing due" during any stated period can only mean dividends as they become payable by the corporation to the shareholder.

The court went on to say:

> How can these dividends possibly be said to have 'accrued due' or to be 'accruing due' when no profits have been earned to provide for their payment and no declaration has been made by the directors fixing any date therefor? The shareholders acquire no right to payment of any dividends until there are net profits, out of which alone they can be paid and until such time as the directors determine they shall be paid.

[36] The use of the word "accrue" connotes the ability to calculate a precise amount of money. The word "due" connotes that it is payable whether or not the time for payment has arrived. See *Black's Law Dictionary*, 6th ed., The West Group at p. 499, where it is noted that with respect to the word "due," "it imports a fixed and settled obligation or liability but with reference to the time for its payment, there is considerable ambiguity in the use of the term."

[37] In *Toronto Dominion Bank v. Usarco Ltd.*, [1991] 42. E.T.R. 235, Ont. C.J. (Gen. Div.), Farley J. dealt with the deemed trust provisions under what is now section 57(4) of the *PBA* in a context in which a declaration was sought prior to a bankruptcy petition. He said at paragraph 26:

> It therefore appears to me that the deemed trust provisions of subs. 58(3) and (4) only refer to the regular contributions together with those special contributions which were to have been made but were not. In this situation, that would be the regular and special payments that should have been made but were not (as reflected in the report of December 31, 1988), together with any regular or special payments that were scheduled to have been made by the wind-up date, July 13, 1990, but were not made. This is contrasted with the obligation of Usarco to fully fund its pension obligations as of the wind-up date pursuant to s. 76(1). It is recognized in these circumstances, however, that the bank will have a secured position which will prevail against these additional obligations as to the special payments, which have not yet been required to be paid into the fund. Sadly, it is extremely unlikely there will be a surplus after taking care of the bank to allow the pension fund to be fully funded for this (the likelihood being that the wind-up valuation of assets and liabilities of the pension fund will show a deficiency.)

[38] The issue was dealt with again in *Ivaco Inc. Re.* [2006] 25 C.B.R. [5th] 176. (Ont. C.A.), J. Laskin J.A. speaking for the Court of Appeal noted at paragraph 38 that "in a series of cases, the Supreme Court of Canada has repeatedly said that a province cannot, by legislating a deemed trust, alter the scheme of priorities under the federal statute."

[39] Paragraph 44 of that decision states:

> At para. 11 of his decision, the motions judge said that both unpaid contributions and wind-up liabilities are deemed to be held in trust under s. 57(3). In his earlier decision in *Toronto-Dominion Bank v. Usarco* (1991), 42 E.T.R 235, Farley J. said, at para. 25, that the equivalent legislation then in force under the *Pension Benefits Act, 1987*, S.O. 1987, c.35 referred only to unpaid contributions, not to wind-up liabilities. I think that the statement in *Usarco* is correct, but I do not need to resolve the issue on this appeal.

[40] In the text "Essentials of Canadian Law-Pension Law" (Toronto: IrwinLaw, 2006) author Ari N. Kaplan at page 396 states:

> The *PBA* does not expressly state whether a funding deficiency on the wind up of a pension plan is secured by the deemed trust, but it appears that the deemed trust is intended to apply to the deficiency to the extent it relates to employer contributions and remittances due and owing to the pension fund on wind up, but which have not been paid."

[41] The author goes on in the next paragraph:

> The deemed trust does not extend to the obligation of an employer to fund pension obligations that have not yet become due or which "crystallize" only upon the windup of the pension plan.

The *Usarco* decision referred to above is the foundation for that statement.

[42] In his paper given at an Insight Conference, "Pension Management in Insolvency and Restructuring: What Is At Stake?" September 20, 2005, Gregory J. Winfield at page 29 states:

> Of particular note to secured creditors will be the fact that the courts have determined that the deemed trust created under that O*PBA* does not extend to the unfunded pension liability upon the windup of the plan, but is limited to the outstanding unremitted contributions that are past due plus those arising in respect of the stub period. Accordingly while the entirety of the pension fund shortfall remains an obligation of the employer, and an obligation exists under the O*PBA* to fund this deficiency over a period not exceeding five years from the date of wind up, at present this is an unsecured claim on the assets of the debtor." [Reference omitted]

[43] The difficulty in reconciling the requirements of the pension statute with the regime of the *CCAA* is that a company such as Indalex is entitled to carry on business and to make payments in the ordinary course of such business including those that may be required under the initial order which may well, as here, include certain ongoing pension obligations while in *CCAA*.

[44] Were it not for the provisions in s. 31 of the Regulations, Indalex would have had under s. 75 of the *PBA* to pay in as of the date of wind-up any Plan deficiency. Section 31 of the Regulation as anticipated in s. 75 of the Act spreads that into five equal annual instalments.

[45] One obvious purpose behind the provision in s. 31 of the Regulation is to ease the burden on the Company to enable it to have the funds to operate its normal business operations while it earns the revenue to make up the deficiency.

[46] The pension issues that have arisen given the nature of the recent recession, as here, are often complex and pit as adversaries creditors of a corporation who most often having advanced funds under security which creditors assert give them priority as to the repayment, as against employees many of whom are long-term or even retired who have seen the assets supporting their pensions decrease in value, risking the payments to which the employees are otherwise entitled by the terms of the plan of which they are members.

[47] In circumstances such as this, the Court does not have the mandate to exercise the discretion to do what it or any group might consider fair and equitable. The federal insolvency legislation in force (the *CCAA* and *BIA*) provide schemes of priority among creditors commencing with those who have security over the assets of the company. Pitted against those

with security are those unsecured creditors who must share in whatever is left over after the secured creditors are paid.

[48] Employees or retired employees are entitled to pensions in accordance with the contractual terms of their pension plan. In certain circumstances those contractual terms will be augmented by the provisions of the *PBA* to the extent that they do not conflict with federal insolvency legislation. In some of these circumstances, a "deemed trust" will arise.

[49] In this case I have concluded there is no conflict between the federal and provincial legislation. I find that as of the date of closing and transfer of assets there were no amounts that were "due" or "accruing due" on July 20, 2010. On that date, Indalex was not required under the *PBA* or the Regulations thereunder to pay any amount into the Plan. There was an annual payment that would have become payable as at December 31, 2009 but for the stay provided for in the Initial Order under the *CCAA*.

[50] Since as of July 20, 2009, there was no amount due or payable, no deemed trust arose in respect of the remaining deficiency arising as at the date of wind-up.

[51] Since under the initial order priority was given to the DIP Lenders, they are entitled to be repaid the amounts currently held in escrow. Those entitled to windup deficiency remain as of that date unsecured creditors.

Motion To Lift Stay

[52] The Applicants and Indalex US, in addition to disputing the validity of the deemed trust claim, sought to file a voluntary assignment in bankruptcy to ensure the priority regime they urged as the basis for resisting the deemed trust.

[53] In support of that position, it was urged that since the Applicants no longer carried on business, have no active employees and no tangible assets apart from tax refunds (other than the cash sale proceeds associated with the above motion), and no directors (they having resigned), an assignment in bankruptcy is appropriate. The stay granted under the Initial Order, it is urged, should be lifted for that purpose.

[54] The decision on the voluntary assignment was reserved pending a decision in the main motion above, since to allow the bankruptcy to proceed might have deprived employees of an argument under the *CCAA*.

[55] Given that disposition, the question of bankruptcy assignment might well be moot. In my view, a voluntary assignment under the *BIA* should not be used to defeat a secured claim under valid Provincial legislation, unless the Provincial legislation is in direct conflict with the provisions of Federal Insolvency Legislation such as the *CCAA* or the *BIA*. For that reason I did not entertain the bankruptcy assignment motion first.

[56] I conclude that it is not necessary to deal with the issue of the voluntary assignment, at least on the basis sought by the Applicants at this time. I did not find conflict between the federal and provincial regimes.

[57] Should the Applicants wish to renew the request for bankruptcy relief, the motion can be scheduled through the Commercial List.

C. CAMPBELL J.

Released: Feb 18, 2010

CITATION: Re Indalex 2010 ONSC 1114
Court File No. 05-CL-5880
Date: 20100218

SUPERIOR COURT OF JUSTICE
ONTARIO
(Commercial List)

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

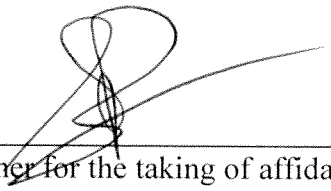
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and NOVAR INC. (the "Applicants")

REASONS FOR DECISION

C. CAMPBELL J.

RELEASED: February 18, 2010

This is Exhibit "D" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	Chapter 11
IH 1, Inc., *et al.*[1]	Case No. 09-10982-PJW
	(Consolidated for Administration)
Debtors.	
	Related to Doc. No. 655, 611, 223, 700

AGREED ORDER CONVERTING THE DEBTORS' CHAPTER 11 CASES TO CHAPTER 7 CASES PURSUANT TO 11 U.S.C. § 1112(b) AND REAFFIRMING RIGHTS UNDER FINAL ORDER (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POST-PETITION FINANCING UNDER 11 U.S.C. §§ 105, 361, 362, 364 (c)(1), 364, 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL UNDER 11 U.S.C. § 363 AND (II) GRANTING ADEQUATE PROTECTION UNDER 11 U.S.C. §§ 361, 362, 363 AND 364

Upon consideration of the Motion of the Official Committee of Unsecured Creditors' of Indalex Holdings Finance, Inc., Indalex Holdings, Indalex, Inc., Caradon and Dolton to Convert the Debtors' Chapter 11 Cases to Chapter 7 Cases Pursuant to 11 U.S.C. §1112(b) (the "Motion"), and finding that due and sufficient notice of the Motion having been given under the circumstances; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding under 28 U.S.C. §157(b)(2); and the Debtors, the Creditors' Committee, Sun Indalex Finance, LLC, the DIP Agent and the Prepetition Agent having agreed to the conversion to chapter 7 on the terms set forth herein; and after due deliberation and sufficient cause appearing therefore, it is hereby

[1] The Debtors in these cases and their tax identification numbers are: IH 1, Inc. f/k/a Indalex Holdings Finance, Inc. (XX-XXX0880) ("Indalex Finance"), IH 3, Inc. f/k/a Indalex Holding Corp. (XX-XXX0715) ("Indalex Holdings"), IH 2, Inc. f/k/a Indalex Inc. (XX-XXX7362) ("Indalex Inc."), IH 4, Inc. f/k/a Caradon Lebanon, Inc. (XX-XXX1208) ("Caradon"), and IH 5, Inc. f/k/a Dolton Aluminum Company, Inc. (XX-XXX2781) ("Dolton"). The business address for all of the Debtors is 75 Tri-State International, Suite 450, Lincolnshire, IL 60069.

ORDERED, ADJUDGED and DECREED as follows:

The Motion is GRANTED.

2. The Debtors' chapter 11 cases are converted, pursuant to 11 U.S.C. § 1112(b), to cases under chapter 7 of the United States Bankruptcy Code, effective as of 4:00 p.m. (EST) October 30, 2009 (the "Conversion Date"). Pending the Conversion Date, the Investigatory Period, as defined in the Final DIP Order (defined below), shall continue with all rights preserved. Thereafter, the Investigatory Period shall extend, solely for the chapter 7 trustee, for thirty (30) days following the Conversion Date or as otherwise ordered by this Court upon a showing of cause by the chapter 7 trustee.

3. Notwithstanding any other Order of this Court entered during these bankruptcy cases, all rights to investigate, prosecute, settle or otherwise proceed with the Sun Actions[2] or the Allocation Motion (Docket No. 658) are hereby reserved for the chapter 7 trustee (including, without limitation, the right to commence and prosecute the Sun Actions and Allocation Motion, and the rights reserved for the chapter 7 trustee and the Committee in the Final DIP Order (defined below) and in the Sale Order (defined below)).

4. The Debtor shall:

a. Forthwith turn over to the chapter 7 trustee all records and property of the estate under its custody and control as required by Federal Rule of Bankruptcy Procedure ("FRBP") 1019(4);

b. Within 15 days of the date of this order file a schedule of unpaid debts incurred after commencement of the superseded cases, including the name and address of each creditor, as required by FRBP 1019(5);

[2] All capitalized terms that are not defined herein shall have the meaning ascribed to them in the Motion.

c. Within 15 days of the date of this order file the statements and schedules required by FRBP 1019(1)(A) and 1007(b), if such documents have not already been filed; and

d. Within 30 days of the date of this order, file and transmit to the United States Trustee a final report and account as required by FRBP 1019(5)(A).

5. The Debtors shall escrow funds in an amount equal to all unpaid professional fees incurred and costs advanced through the Conversion Date (the "Escrow Funds") for the benefit of professionals, with these estates having a residual interest in the escrowed funds to the extent there are excess funds in such escrow account after such fees are allowed by the Court and paid. The Escrow Funds shall include a good faith estimate of fees and costs to be incurred through the Conversion Date. All parties shall be barred from objecting to professional fees on the basis of the Litigation Cap (used as defined in the DIP Order) set forth in paragraph 21 of the Final Order (I) Authorizing the Debtors (A) To Obtain Post-Petition Financing Under 11 U.S.C. §§ 105, 361, 362, 354(c)(1), 364(c)(2), 364(c)(3) and 364(e) and (b) to Utilize Cash Collateral Under 11 U.S.C. § 363 and (II) Granting Adequate Protection Under 11 U.S.C. §§ 361, 362, 363 and 364 (the "Final DIP Order", Docket No. 223), provided, however, that all other rights are reserved with respect to fee objections not otherwise barred, waived, or estopped by prior orders of the Court.

6. Huron Consulting Group ("Huron") shall immediately submit a disbursement notice to Wilmington Trust Corporation regarding outstanding fees and expenses of $201,454.20 (80% of fees and 100% of expenses) on account of the Second Monthly Application of Huron Consulting Group As Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Interim Compensation and for Interim Reimbursement of All Actual and Necessary Expenses Incurred for the Period May 1, 2009 Through May 31, 2009 ("Huron's Second Fee Application"), and Wilmington

Trust Corporation shall immediately pay those funds as permitted in accordance with, and subject to, this Court's Order Authorizing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Fee Order", Docket No. 149). Nothing herein bars the final allowance and payment of the 20% holdback of fees sought by Huron under Huron's Second Fee Application, or the rights of any party to object to final allowance of any amounts requested in Huron's Second Fee Application.

7. On the Conversion Date, the automatic stay shall be lifted in favor of Sun Indalex Finance, LLC ("Sun"), for the sole purpose of permitting Sun, in consultation with the chapter 7 trustee, to conduct negotiations and settlement (subject to Court approval and pursuant to a budget agreed upon by Sun and the chapter 7 trustee) of (a) working capital adjustment remaining from the Debtors' sale of substantially all of their assets to SAPA Holdings AB and its affiliates (the "Sale"), which Sale was approved by Order of this Court dated July 20, 2009 (the "Sale Order," Docket No. 516) and (b) the monetizing of remaining letters of credit, as well as adjustments to the workers' compensation collateral, provided, however, that any benefit that is derived from such efforts shall inure to the bankruptcy estates and distributions derived therefrom shall be made upon subsequent order of this Court.

8. Upon entry of this Order, Sun shall be paid $1,800,000 (the "Sun Payment") from the Sale proceeds currently being held by the Debtors. The Sun Payment shall be subject to clawback in the event and to the extent that the chapter 7 trustee prevails in an objection, contest or other challenge to the validity, perfection, priority, extent or enforceability of any amount due Sun, including, without limiting the scope of this paragraph, challenges asserted under chapter 5 of the Bankruptcy Code. Without limiting the rights of any party in interest, all other estate assets shall remain with the bankruptcy estates pending further order of Court.

9. Except as provided in paragraphs 5, 7, 8, 11, 14, 15,1 6 and 17 hereof, nothing in this Order shall in any manner modify, impair or otherwise limit any of the rights and remedies granted under the Sale Order or the Final DIP Order to the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Revolving Lenders, the Prepetition Indenture Trustee (such terms used as defined in the Final DIP Order), the Issuing Bank (used as defined in the Sale Order) the Debtors, the Committee, or the professionals retained in these cases.

10. Notwithstanding anything to the contrary contained herein, the Debtors' estates shall pay to the DIP Agent all remaining fees and expenses owing under the DIP Credit Agreement (used as defined in the Sale Order) as and when due.

11. The chapter 7 trustee shall not have any authority, and is prohibited from requesting authority, under 11 U.S.C. § 363 or otherwise, (1) to use the funds deposited (or any investment of those funds) in the L/C Collateral Account (used as defined in the DIP Credit Agreement) for any purpose at any time during the Debtors' bankruptcy cases or (2) to grant or suffer to exist a lien of any priority on the L/C Collateral Account to secure any obligation of the Debtors or their estates other than the perfected, unavoidable first priority lien, senior to all other prepetition and postpetition liens, under 11 U.S.C. § 364(c)(2), on the L/C Collateral Account and any investment of the funds contained therein for the benefit of the DIP Agent and the Issuing Bank; provided, however, that upon the indefeasible payment in cash in full (whether by direct payment by the Debtors' estates or deduction from the L/C Collateral Account) of each of the remaining obligations under the DIP Credit Agreement owing to the DIP Agent or the Issuing Bank as set forth in the Payoff Letter (used as defined in the Sale Order), the DIP Agent will return to the Debtors' estates the funds remaining in the L/C Collateral Account that are unused for the payment of such obligations.

12. JPMorgan Chase Bank, N.A. ("JPM"), as DIP Agent and Prepetition Agent, consents pursuant to paragraphs 10, 11 and 16 of the Final DIP Order regarding payments of all amounts paid by the Debtors prior to consummation of sale, escrowed in connection with such Sale, and paid after consummation of such Sale, which amounts were intended to ensure payment of all administrative claims that arose from and after consummation of these cases (as budgeted by the Debtors).

13. Nothing contained herein shall preclude JPMorgan Chase Bank, N.A. from resigning as the DIP Agent or from resigning as the Prepetition Agent.

14. Effective immediately upon the effectiveness of this Order, JPM's resignation as Prepetition Agent under the Prepetition Credit Agreement and each of the "Loan Documents" (as defined therein) as provided for in and pursuant to Article VIII of the Prepetition Credit Agreement shall become effective, and Sun is hereby appointed as the Prepetition Agent under the Prepetition Credit Agreement and such Loan Documents. Sun hereby accepts such appointment as provided for in and pursuant to Article VIII of the Prepetition Credit Agreement. The Debtors hereby acknowledge such appointment and confirms such appointment is satisfactory to them. Neither this Order nor any resignation by JPM as the Prepetition Agent shall impair, limit or otherwise affect the validity, priority and/or extent of any lien or security interest granted to JPM as Prepetition Agent for the benefit of Sun.

15. Effective concurrently with the resignation of JPM as the Prepetition Agent, (i) Sun shall automatically and without the necessity of any further action by any Person (including, without limitation, any amendment to, or refilling of, any agreement, documents, instrument or financing statement naming JPM as secured party), be deemed to have been substituted for JPM as the grantee of, the secured party or mortgagee or beneficiary with respect to and/or the holder of all of the security interests, pledges, collateral assignments, mortgage liens, deeds of trust and other liens of any

kind, type or nature granted by any of the Debtors pursuant to the Prepetition Credit Agreement and the "Loan Documents" (as defined in the Prepetition Credit Agreement), specifically including without limitation, any security agreements, mortgages, equity pledge agreements, patent security agreements, trademark security agreements and any and all other security agreements or collateral documents of any type or kind executed by any Debtor or any of their affiliates or any other Person in favor of JPM as Prepetition Agent to secure the obligations owing to Sun under the Prepetition Credit Agreement and such Loan Documents (the "Existing Liens"), (ii) all such Existing Liens hereafter shall be deemed to have been granted and/or given to Sun as Prepetition Agent, and (iii) each reference in the Prepetition Credit Agreement or such other Loan Document to JPM, in its capacity as the Administrative Agent, as the grantee of, the secured party or mortgagee or beneficiary with respect to or the holder of any of the Existing Liens shall hereafter be deemed to be a reference to Sun as the Administrative Agent.

16. Without limiting or contradicting any provision of immediately preceding two paragraphs and without requiring Sun to take any action, (i) Sun and its attorneys are hereby authorized to file any and all amendments with respect to any and all UCC-1 financing statements naming JPM as secured party and any Debtor or any of its affiliates as debtor filed in any jurisdiction in connection with the Prepetition Credit Agreement and such Loan Documents (including without limitation amendments changing the secured party of record with respect to any such financing statement from JPM to Sun) as Sun may in the future elect in its discretion, (ii) JPM, as Prepetition Agent, and the Debtors shall execute and deliver to Sun any and all other agreements, documents or instruments that Sun may hereafter reasonably request to reflect the provisions of this paragraph, and Sun is hereby authorized to file and/or record any such agreement, document or instrument so executed and delivered by JPM or the Debtors in and/or with

any applicable public registry, recorder's office or other governmental authority or agency and (iii) Sun is hereby authorized to provide any applicable public registry, recorder's office or other governmental authority or agency with which any agreements, documents or instruments relating the Existing Liens are filed or any other applicable party in interest (including any applicable court) as evidence of the substitution of Sun for JPM as the grantee of, the secured party or mortgagee or beneficiary with respect to and/or the holder of the Existing Liens. Notwithstanding the foregoing, (i) nothing contained in this decretal paragraphs 14, 15 and 16 shall modify, limit, waive or otherwise impair the right or ability of the chapter 7 trustee (or the Committee pre-conversion) to investigate, initiate or prosecute the Sun Actions or the Allocation Motion in any manner.

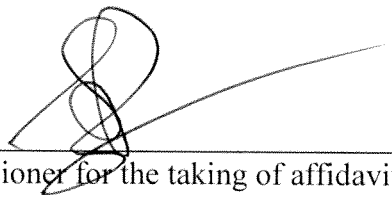
17. Any DIP Lender, or its affiliate thereof, that is a party to any account control agreement covering an account of any of the Debtors shall be entitled to terminate such account control agreement in its sole discretion at any time; provided, however, that the liens, if any, on the deposit accounts and all cash and other items on deposit therein, or subject thereto, granted for the benefit of Sun or any affiliate or to the Prepetition Indenture Trustee, shall not in any way be impaired, limited or otherwise affected by such termination.

18. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

Dated: October 14, 2009
Wilmington, Delaware

Peter J. Walsh
United States Bankruptcy Judge

This is Exhibit "E" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com

REPLY TO: HARVEY G. CHAITON
FILE NO.: 38760
DIRECT: 416-218-1129
FAX: 416-218-1849
EMAIL: harvey@chaitons.com

October 29, 2010

VIA EMAIL

Andrew Hatnay
Demetrios Yiokaris
Koskie Minsky LLP

Darrell Brown
Sack Goldblat Mitchell

Mark Bailey
Financial Services Commission of Ontario

Fred Myers
Brian Empey
Goodmans LLP

Ashley Taylor
Stikeman Elliott

Re: Indalex Limited et al – CCAA
Leave to Intervene

Dear Counsel,

We are lawyers for George L. Miller (the "US Trustee"), the Chapter 7 Trustee of the bankruptcy estates of the US Indalex Debtors (the "US Debtors"), who was appointed by the United States Trustee on October 30, 2009, several months after the pension deemed trust motions were argued.

As you are aware, approximately $10.7M of the DIP loan was paid by the US Debtors which, pursuant to paragraph 14 of the Approval and Vesting Order, have a subrogated claim for the amount paid, secured by the DIP Lenders Charge against the assets of the Canadian Debtors.

We understand that the appeal from the decision of Justice Campbell is scheduled to be heard by the Ontario Court of Appeal on November 23 and 24, 2010. Mr. Taylor has kindly provided us with copies of the facta filed by the Appellants, from which it appears that the Appellants are not only seeking to have the Ontario Court of Appeal determine that the proceeds of sale from the property of the Canadian Debtors is subject to a deemed trust under the *Pension Benefits Act* (Ontario), but also that such deemed trust has priority over the DIP Lenders Charge notwithstanding the terms of the Initial Order.

It is obvious that the US Trustee has a substantial economic interest in the outcome of the appeal and has therefore instructed us to seek leave to intervene on the appeal. We can

Chaitons LLP

assure you that the US Trustee's proposed intervention will not delay the appeal and we are prepared to do so on the basis that the US Trustee will take the record as it is, and will have the right to file a factum and to make oral argument, the time for which shall come out of the time allotted to the Respondents. I would not expect to need more than 15 to 20 minutes.

Please seek instructions and confirm your clients will consent to an Order granting the US Trustee leave to intervene on the appeal. Thank you in advance for your anticipated co-operation.

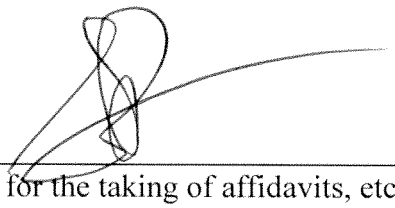
Yours truly,
CHAITONS LLP

Harvey G. Chaiton
PARTNER

HGC/mg

cc: George L. Miller
Peter Hughes
George Benchetrit

This is Exhibit "F" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

KOSKIE
MINSKY LLP
BARRISTERS & SOLICITORS

November 1, 2010

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via E-mail

Chaitons LLP
185 Sheppard Ave. W.
Toronto, ON M2N 1M9

Attention: Harvey Chaiton and George Benchetrit

Dear Sirs:

Re: Indalex
Re: Appeal to Ontario Court of Appeal
Re: Proposed Intervention by George L. Miller (the "U.S. Trustee")
Our File No. 09/1225

We acknowledge receipt of your letter of October 29, 2010.

As you are aware, this matter has been before the courts for a significant amount of time. The decision of Justice Campbell was released February 18, 2010. Our appeal to the Ontario Court of Appeal was perfected on July 2, 2010. We have received the factums of the Monitor and Sun Indalex which you indicate counsel to the Monitor has provided to you. Sun Indalex identifies itself in its comprehensive factum as "the principal creditor advancing proven secured claims and the beneficiary of the Court-ordered super-priority claims against the funds being held by the Monitor..." The issues in opposition to the Retirees' appeal are therefore fully canvased in the factums of the Monitor and Sun Indalex which will be before the Court of Appeal.

Accordingly, we do not see what useful addition or contribution an intervention by the U.S. Trustee would have in this appeal. We refer you to the case of *Oakwell Engineering Ltd.* v. *Enernorth Industries Inc.* [2006] O.J. 1942 (C.A.) where McMurtry, C.J.O. endorsed the principle that: "Proposed intervenors must be able to offer something more than the repetition of another party's evidence and argument or a slightly different emphasis on arguments squarely [made] by the parties" (at para. 11).

Our instructions are to oppose an intervention by the U.S. Trustee.

KOSKIE MINSKY LLP
BARRISTERS & SOLICITORS

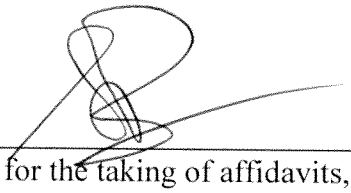
Yours truly,

KOSKIE MINSKY LLP

Andrew J. Hatnay
AJH:jc

cc: Darrell Brown, *Sack Goldblatt Mitchell LLP*
Fred Myers and Brian Empey, *Goodmans LLP*
Ashley Taylor, *Stikeman Elliott LLP*
Mark Bailey, *Financial Services Commissions of Ontario*
Hugh O'Reilly, *Cavalluzzo Hayes Shilton McIntyre and Cornish LLP*

This is Exhibit "G" to the Affidavit of
Amy Casella on November 8, 2010



A Commissioner for the taking of affidavits, etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com

092

REPLY TO: GEORGE BENCHETRIT
FILE NO.: 38760
DIRECT: 416.218.1141
FAX: 416.218.1841
EMAIL: *george@chaitons.com*

November 2, 2010

VIA EMAIL

Andrew J. Hatnay
Koskie Minsky LLP
Barristers & Solicitors
20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Re: ***Indalex Limited et al – CCAA***
Appeal to the Ontario Court of Appeal
Leave to Intervene by George L. Miller (the "U.S. Trustee")

Dear Mr. Hatnay,

We are in receipt of your letter dated November 1, 2010.

As indicated by e-mail yesterday, based on the intended opposition of your client and the United Steelworkers, we are proceeding to schedule the U.S. Trustee's motion for leave to intervene. We are waiting to hear back from the Court of Appeal as to a date for the motion.

In direct response to your letter, I note that the case and the test that you have cited deal with leave to intervene as a "friend of the court" under Rule 13.02 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), and accordingly do not apply to the U.S. Trustee's motion.

The U.S. Trustee is seeking leave to intervene as an "added party" pursuant to Rule 13.01, and not as a "friend of the court" pursuant to Rule 13.02. The test under Rule 13.01 is as follows:

> **13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,**
>
> **(a) an interest in the subject matter of the proceeding;**
>
> **(b) that the person may be adversely affected by a judgment in the proceeding; or**
>
> **(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.**
>
> **(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the**

determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

The U.S. Trustee clearly qualifies under each of the 3 branches of the test under Rule 13.01(1), and it is clear that the intervention will not cause any delay or prejudice.

Accordingly, we are again asking that you reconsider your clients' position in order to avoid the unnecessary costs of the intervention motion.

We intend to submit this letter to the Court as part of our cost submissions if your clients and/or the United Steelworkers do not consent to the motion.

Yours truly,
CHAITONS LLP

George Benchetrit
PARTNER

GB/ac
Cc: Darrell Brown, *Sack Goldblatt Mitchell LLP*
Fred Myers and Brian Empey, *Goodmans LLP*
Ashley Taylor, *Stikeman Elliott LLP*
Mark Bailey, *Financial Services Commissions of Ontario*
Hugh O'Reilly, *Cavalluzzo Hayes Shilton McIntyre and Cornish LLP*

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.: C52187
Court File No.: C52346
Superior Court File No.: CV-09-8122-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
Fax: 416-218-1849

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 218-1841

Lawyers for George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the US Indalex Debtors