

TAB 1

Notice of Motion

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

NOTICE OF MOTION

THE APPLICANTS, Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the "Applicants") will make a motion to the Court, on a date to be fixed by the Honourable Mr. Justice Campbell (the "Hearing Date"), at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR AN ORDER**

- a) abridging the time for service of the Notice of Motion and Motion Record, if necessary, and that the motion is properly returnable on the Hearing Date;
- b) lifting the stay of proceedings for the purpose of allowing the Applicants, or any of them, to (i) file a voluntary assignment in bankruptcy pursuant to section 49 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), and (ii) take all steps necessary and incidental to the filing of a voluntary assignment in bankruptcy; and

- c) such further and other relief as the Applicants may request and this Honourable Court shall deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**BACKGROUND**

- (a) 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;
- (b) 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, pursuant to an order (the “Initial Order”) of the Honourable Mr. Justice Morawetz;
- (c) Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants;
- (d) 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”);
- (e) 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;
- (f) 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”);

- (g) 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 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;
- (h) 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”);
- (i) 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 underfunded deficiencies be included in the amount retained by the Monitor as Undistributed Proceeds, pending further order of the Court;
- (j) 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;
- (k) 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;
- (l) 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;

**DEEMED TRUST CLAIM**

- (m) August 28, 2009 was scheduled for the hearing of the deemed trust motion and both the Former Executives and the USW served and filed their motion records on August 5, 2009;
- (n) 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**

- (o) 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;
- (p) Any purported priority claimed by the USW and the Former Executives (which priority is disputed by the Applicants) is extinguished on bankruptcy;
- (q) 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 BIA applies to the distribution of the Canadian Sale Proceeds;

**CORPORATE GOVERNANCE**

- (r) 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;
- (s) 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;

- (t) 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;
- (u) The grounds set out in the Affidavit of Keith Cooper, to be sworn (the "Cooper Affidavit");
- (v) Section 49 of the BIA and Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (w) Such further grounds as counsel may advise and this Honourable Court may permit.

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

- a) The Cooper Affidavit;
- b) A Report of the Monitor, to be filed; and
- c) Such further and other materials as counsel may advise and this Honourable Court may permit.

August 20, 2009

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SUPERIOR COURT OF JUSTICE-  
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Proceeding commenced at Toronto

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