

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

BETWEEN:

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 CANADA INC. and
NOVAR INC.

Applicants

SUPPLEMENTARY MOTION RECORD

(Motion for Reinstatement of Supplementary Pension Benefits, returnable July 2, 2009)

June 25, 2009

KOSKIE MINSKY LLP

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Richard Smith, Robert Leckie and Neil Fraser
(the "SERP Group")

TO: ATTACHED SERVICE LIST

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INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and
NOVAR INC.

Applicants

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	<p>MILLER CANFIELD Suite 300 443 Ouellette Avenue Windsor, ON N9A 6R4</p> <p>John D. Leslie Tel: (519) 561-7422 Fax: (519) 977-1565 E-mail: leslie@millercanfield.com</p> <p>Canadian Co-Counsel with McGuire Woods to the Unsecured Creditors Committee</p>

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TAB 1

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

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 CANADA INC.
and NOVAR INC.

Applicants

**AFFIDAVIT OF LEON KOZIEROK
(sworn June 25, 2009)**

I, Leon Kozierok, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a former executive employee of Indalex Division of Indal Limited, which is a predecessor company to Indalex Limited and/or one of its affiliated companies, (collectively, "Indalex Canada" or the "company"), who are the Applicants in these proceedings.
2. I am part of the SERP Group along with Keith Carruthers, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie and Neil Fraser. We are all entitled to receive supplemental pension benefits from the Applicants.
3. Attached hereto as **Exhibit A** is a copy of a letter from our counsel, Andrew Hatnay of Koskie Minsky LLP dated May 29, 2009, sent to Blake Cassels and Graydon LLP, counsel to the Applicants requesting reinstatement of our supplemental pension benefits that the company terminated immediately after obtaining protection under the *Companies' Creditors Arrangement Act* (the "CCAA") on April 3, 2009.

4. Attached hereto as **Exhibit B** is a copy of a letter from Blake Cassels and Graydon LLP to Andrew Hatnay at Koskie Minsky LLP dated June 3, 2009, stating that the Applicants refuse to reinstate our supplemental pension benefits.

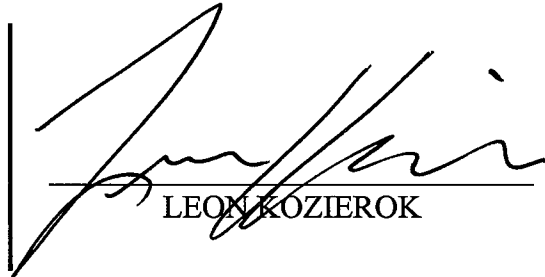
5. I swear this Affidavit in good faith and in support of a motion requiring the Applicants to reinstate the payment of supplemental pension benefits to me and the other SERP Group members.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario on
June 25, 2009.



Commissioner for Taking Affidavits

ANDREW HATNAY


LEON KOZIEROK

This is Exhibit CAA? referred to in the
affidavit of LEON KOZIKROK
sworn before me, this 25th
day of JUNE 2009
AAA
A COMMISSIONER FOR TAKING AFFIDAVITS

May 29, 2009

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

Sent via Facsimile

Linc Rogers / Katherine McEachern / Jackie Moher
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 2800, Commerce Court West
Toronto, ON M5L 1A9

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

Dear Counsel:

- Re: In the Matter of the *Companies Creditors' Arrangement Act* (the "CCAA")
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.
("Indalex Canada" or the "company")**
- Re: Members of the Supplementary Retirement Plan for Executive Employees of
Indalex Canada and Associated Companies**
- Re: Our File No. 09/0776**

We are solicitors for the Indalex SERP Protection Committee (the "Committee"), a committee of former salaried employees of Indalex Limited and/or one of its subsidiaries or affiliates (collectively, "Indalex Canada" or the "company").

The Committee represents former salaried employees (or their surviving spouses) who are members of the Supplementary Retirement Plan for Executive Employees of Indalex Canada and Associated Companies, a contract which provides supplementary pension benefits to certain retired employees (the "SERP"). The Committee has retained our firm in respect of the termination of their SERP benefits by Indalex Canada, which is in proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA").

We have been advised that the company stopped paying our clients their monthly SERP benefits immediately after it obtained protection from its creditors under the CCAA on April 3, 2009. The sudden cessation by the company of such retirement benefits has caused immediate financial hardship to our retiree clients.

We are writing to request that the company immediately reinstate our clients' supplemental pension benefits and to issue a make up payment in the amount of the benefits not paid since the payments were ceased by the company.

The amount of the monthly SERP payments to which our clients are entitled is approximately \$19,792, a nominal amount, and are set out as follows:

- **Max Degen (Age 76):** Mr. Degen was Vice-President, Manufacturing Services of Indalex Limited and is entitled to a monthly benefit payment of \$645.59.
- **Keith Carruthers (Age 67):** Mr. Carruthers was CEO of Indalex Limited and is entitled to a monthly benefit payment of \$3570.50.
- **Leon Kozierok (Age 67):** Mr. Kozierok was President of Indalloy Division, Indalex Limited and is entitled to a monthly benefit payment of \$4,325.80.
- **Bertram McBride (Age 61):** Mr. McBride was Key Account Manager with Indalex Limited and is entitled to a monthly benefit payment of \$2,082.92.
- **Eugene D'Iorio (Age 64):** Mr. D'Iorio was President, Indalex South Region of Indalex Limited and is entitled to a monthly benefit payment of \$2,249.23.
- **Neil Fraser (Age 70):** Mr. Fraser was President / CEO of Caradon Windows and Doors Ltd. (an affiliate and/or predecessor company to Indalex Canada) and is entitled to a monthly benefit payment of \$2,800.73.
- **Dick Smith (Age 59):** Mr. Smith was General Manager of Indalex Vancouver prior to taking a position with Indalex U.S. as President of Mideast Aluminium. Mr. Smith is entitled to a monthly benefit payment of \$3,831.74.
- **Robert B. Leckie (Age 61):** Mr. Leckie was Vice President and General Counsel of Indal Limited from 1988 to 1993 and is entitled to a monthly benefit payment of \$1,750.00.
-

CCAA and Chapter 11 Proceedings

Despite filing for CCAA protection, Indalex Canada maintains a positive cash flow and has access to substantial financing.¹ The Initial CCAA Application materials indicate that the Applicants' CCAA filing sought to allow Indalex Canada to stabilize its business and to seek a long term strategic going concern solution for its business operations.² We understand that the proceedings in Canada were pursued in order to maintain coordination and stability between Indalex Canada and Indalex U.S. and resulted in a DIP Agreement which provides the Applicants with loan facility of up to \$24.36 million.³

¹ See the Monitor's First Report to the Court, dated April 8, 2009 (the "Monitor's First Report"). The Consolidated Cash Flow Forecast at Appendix A forecasts that Indalex Canada will maintain a positive cash flow throughout the month of May. The Cash Flow Forecast also indicates that Indalex Canada will maintain an excess in credit availability throughout the April 7 forecast.

² Affidavit of Timothy R.J. Stubbs, sworn April 3, 2009, paragraphs 4, 7 and 28 (the "Stubbs Affidavit").

³ Monitor's First Report, paragraph 27.

Indalex Canada has chosen to stop benefit payments to our clients who are members of the SERP. We are advised that our clients received their last SERP benefit payment in March 2009. It is unfair for Indalex Canada to discriminate against our clients in this manner, particularly when the cost of continuing the benefit payments is negligible to the company. As membership to the plan is closed, the company's SERP liability is finite and readily manageable. As noted, the cost of the monthly benefit payment amounts is approximately \$19,792. Yet the benefits provide vital income for our clients in their retirement years.

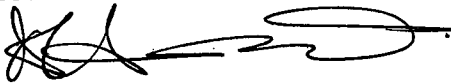
Making the SERP payments to our clients will not impair the restructuring efforts of Indalex Canada or Indalex U.S.

Please confirm that our clients' SERP benefits will be reinstated forthwith and a retroactive payment issued in the amount of the benefits terminated to date.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay

AJH:am

cc: Keith Carruthers
Leon Kozierok
Max Degen
Bertram McBride
Eugene D'Torio
Neil Fraser
Dick Smith
Robert Leckie
cc: Andrea McKinnon, *Koskie Minsky LLP*

FAX TRANSMISSION

DATE: May 29, 2009

TIME:

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Direct Fax 416-204-2872 • E-mail ahatnay@kmlaw.ca

SUBJECT: **Re: In the Matter of the Companies Creditors' Arrangement Act (the "CCAA") 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. ("Indalex Canada" or the "company")**
Re: Members of the Supplementary Retirement Plan for Executive Employees of Indalex Canada and Associated Companies

FILE #: 09/0776

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FAX TRANSMISSION

DATE: May 29, 2009

TIME:

TO:	PHONE #	FAX #
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Stikeman Elliott LLP Attention: Ashley Taylor	416-869-5236	416-947-0866

FROM: Andrew J. Hatnay • Direct Phone 416-595-2083
Direct Fax 416-204-2872 • E-mail ahatnay@kmlaw.ca

SUBJECT: Re: In the Matter of the *Companies Creditors' Arrangement Act*
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Re: Members of the Supplementary Retirement Plan for Executive
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FILE #: 09/0776

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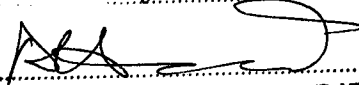
If there are problems with this transmission, please call Judith Muir at 416-595-2706.

Urgent

For Review

Please Reply

COMMENTS OR SPECIAL INSTRUCTIONS

This is Exhibit ecb 1) referred to in the
affidavit of LEON KOBISZCIC
sworn to on this 25th
day of JUNE 2009

A COMMISSIONER FOR TAKING AFFIDAVITS



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

June 3, 2009

Linc A. Rogers
Dir: 416-863-4168
linc.rogers@blakes.com

VIA E-MAIL

Reference: 70013/10

Andrew J. Hatnay
Koskie Minsky LLP
Barristers & Solicitors
20 Queen Street West, Suite 90
Toronto, ON M5H 3R3

Dear Mr. Hatnay:

RE: Proceedings under the Companies' Creditors Arrangement Act ("CCAA") of Indalex Limited ("Indalex Canada") et al. (collectively, the "Applicants")


Re: Members of the Supplementary Retirement Plan for Executive Employees

We make reference to your letter dated May 29, 2009 and the subsequent clarification e-mail from your firm dated June 1, 2009, both addressed to counsel for the Applicants and counsel for the Court-appointed Monitor in these proceedings. We do not agree with the premise of your letter and a number of the statements contained therein.

The purpose of the Applicants' CCAA proceedings is to preserve value for a broad cross-section of stakeholders including employees, customers, business partners, suppliers and secured and other creditors. Indalex Canada fully appreciates that the steps it is required to take during the restructuring process may create significant challenges for many of these stakeholders. These steps, however, are consistent with its obligations to deal with its broad stakeholder constituency in a fair and even-handed manner. Indalex Canada's ultimate goal is to secure a going concern solution for its business that provides the best possible result for these stakeholders as a whole. The restructuring steps taken by the Applicants, in accordance with the Initial Order (as amended), are done in furtherance of that goal.

Accordingly, Indalex Canada is not in a position to comply with the request set out in your letter to reinstate payments to the group of pre-filing unsecured creditors represented by your firm. It is Indalex Canada's view that such payments would be preferential in nature and would unduly deplete Indalex Canada's vital cash resources. In that regard, and as set out in our court material, Indalex Canada's availability is restricted by the borrowing base provided for in the DIP Credit Agreement and limited to the amounts required to meet immediate working capital needs.

Yours very truly,



Linc A. Rogers
LCR/hjm

c: Ashley Taylor, *Stikeman Elliott LLP*
Katherine McEachern, *Blakes*
Jackie Moher, *Blakes*

12301923.2

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

Applicants

ONTARIO

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

Proceeding commenced at **Toronto**

**AFFIDAVIT OF LEON KOZIEROK
(SWORN JUNE 25, 2009)**

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Bertram McBride, Max Degen, Eugene D'Iorio,
Richard Smith, Robert Leckie and Neil Fraser
(the "SERP Group")

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 CANADA INC. and NOV AR
INC.

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

Applicants

ONTARIO

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

Proceeding commenced at **Toronto**

**SUPPLEMENTARY MOTION RECORD
(MOTION FOR REINSTATEMENT OF
SUPPLEMENTARY PENSION BENEFITS,
RETURNABLE JULY 2, 2009)**

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