

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

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

TWENTIETH REPORT OF THE MONITOR

June 14, 2013

**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.

**TWENTIETH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA ULC
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On April 3, 2009, Indalex Limited (“**Indalex**”), Indalex Holdings (B.C.) Ltd. (“**Indalex BC**”), 6326765 Canada Inc. (“**632**”) and Novar Inc. (“**Novar**”) (collectively, the “**Applicants**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an Initial Order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009 (the “**Stay Period**”), and appointing FTI Consulting Canada ULC as monitor (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. Indalex's parent is Indalex Holding Corp. ("**Indalex Holding**"), which is a wholly-owned subsidiary of Indalex Holdings Finance, Inc. ("**Indalex Finance**"). Indalex BC, 632 and Novar are wholly owned subsidiaries of Indalex. On March 20, 2009, Indalex Holding, Indalex Finance, Indalex Inc., Caradon Lebanon, Inc. and Dolton Aluminum Company, Inc. (collectively, the "**US Debtors**") commenced proceedings (the "**Ch.11 Proceedings**") under chapter 11 of the United States Bankruptcy Code (the "**USBC**") in the United States Bankruptcy Court, District of Delaware (the "**US Court**"). The case was assigned to Judge Walsh.
3. On April 8, 2009, Justice Morawetz granted the Amended and Restated Initial Order which, *inter alia*, approved the DIP Credit Agreement (as defined in paragraph 33 of the Amended and Restated Initial Order). The Amended and Restated Order was further amended on May 12, 2009, to correct certain references and typographical errors in the Amended and Restated Initial Order, and on June 12, 2009, to increase the Canadian sub-facility borrowing limit.
4. The Stay Period has been extended a number of times and currently expires on June 28, 2013.
5. On April 22, 2009, Justice Morawetz granted an Order which, *inter alia*, approved the Marketing Process to identify a Stalking Horse bid for Indalex's assets.
6. On July 2, 2009, Justice Morawetz granted an Order which approved the Stalking-Horse Bid of Sapa Holding AB ("**Sapa**") as a "Qualified Bid" under the Stalking Horse Process and the Bidding Procedures.

7. No additional Qualified Bids were received in connection with the Stalking Horse Process prior to the Bidding Deadline and on July 20, 2009, the sale of substantially all of the assets and business of the Applicants and the US Debtors pursuant to the terms of the Asset Purchase Agreement dated as of June 16, 2009 by and among the US Debtors and the Applicants (other than Novar), as sellers, and Sapa, on its own behalf and on behalf of one or more Canadian Purchasers to be named (the “**Sapa Transaction**”) was approved by the Court pursuant to the Order of Justice Campbell (the “**Approval and Vesting Order**”). The US Court approved the Sapa Transaction on the same date.
8. On July 30, 2009, a procedure for the submission, evaluation and adjudication of claims against the Applicants and for the submission of claims, if any, against the directors and officers of the Applicants (the “**Claims Procedure**”) was approved pursuant to the Order of Justice Morawetz (the “**Claims Procedure Order**”).
9. The Sapa Transaction closed in Canada and the U.S. on July 31, 2009. On the same date, all of the Applicants’ directors and officers resigned.
10. On the closing of the Sapa Transaction, US\$17,041,392 of the Canadian Cash Purchase Price was paid to the DIP Lender. The remainder of the Canadian DIP Loan, being US\$10,751,247.22 (the “**DIP Guarantee Payment**”) was satisfied by the US Debtors pursuant to the guarantee granted by the US Debtors to the DIP Lenders. Pursuant to the Approval and Vesting Order, the US Debtors are entitled to be subrogated to the rights of the Agent and the DIP Lenders under the DIP Lenders Charge to the extent of the DIP Guarantee Payment (the “**Subrogated DIP Claim**”).
11. On October 14, 2009, Judge Walsh of the US Court granted an order converting the Ch.11 Proceedings to proceedings under Chapter 7 of the USBC (the “**Ch.7 Proceedings**”). George L. Miller was appointed as the Chapter 7 Trustee of the Bankruptcy Estates of the U.S. Indalex Debtors (the “**US Trustee**”).

12. On October 27, 2009, the Court granted an order (the “**Monitor’s Powers Order**”) increasing the Monitor’s powers in order to facilitate the orderly completion of the CCAA Proceedings and the winding up of the Applicants’ estates, including:
 - a) Completing the Claims Procedure;
 - b) Completing the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction. The working capital adjustment and the final purchase price were settled between the Applicants, the US Debtor, Sapa, Sun Indalex Finance, LLC (“**Sun**”) and the Monitor in July, 2010. As a result, the Monitor received a total of US\$4,485,000 in additional proceeds;
 - c) Responding to the leave to appeal motion of the Retired Executives in connection with the SERP Motion and any resulting appeal. The Retired Executives’ motion for leave to appeal was dismissed by the Court of Appeal on March 24, 2010; and
 - d) Responding to any matters resulting from the decision of Justice Campbell in relation to the Deemed Trust Motions (defined below) and the Bankruptcy Leave Motion (defined below), including the filing of or responding to any appeal therefrom and the filing of any assignment in bankruptcy of any Applicant.

13. On August 28, 2009, certain retired executives (the “**Retired Executives**”) and certain members of the United Steelworkers Union (the “**USW**”) brought motions seeking declarations, *inter alia*, that the property of the Applicants is subject to deemed trusts under the Pension Benefits Act (the “**PBA**”) in favour of the beneficiaries of the “Executive Pension Plan” and the “Salaried Pension Plan”, respectively and that the wind-up deficiencies in those Plans should be paid in priority to all other creditors (the “**Deemed Trust Motions**”).

14. On the same date, the Applicants brought a motion for leave to lift the stay of proceedings for the purpose of allowing one or more of the Applicants to file an assignment in bankruptcy (the “**Bankruptcy Leave Motion**”).
15. The Deemed Trust Motions and the Bankruptcy Leave Motion were heard by Justice Campbell on August 28, 2009. On February 18, 2010, Justice Campbell released written reasons dismissing the Deemed Trust Motions, holding that no deemed trusts arose with respect to wind up deficiencies under either the Executive Pension Plan or the Salaried Pension Plan (the “**Deemed Trust Decision**”). Based on the Deemed Trust Decision, Justice Campbell concluded that it was unnecessary to deal with the Bankruptcy Leave Motion.
16. On November 10, 2010, the Honourable Mr. Justice Campbell heard a motion brought by the Monitor seeking an order declaring that none of the D&O Claims are claims for which the Applicants are required to indemnify their directors and officers and an order terminating, discharging and releasing the Directors’ Charge from the Property (the “**D&O Motion**”). The decision remains under reserve.
17. Leave to appeal the Deemed Trust Decision was granted by the Court of Appeal for Ontario on May 20, 2010 and the appeal was heard on November 23 and 24, 2010 (the “**Pension Appeal**”).
18. On April 7, 2011, the Court of Appeal for Ontario allowed the Pension Appeal and ordered the Monitor to pay from the Reserve fund into each of the Salaried Pension Plan and the Executive Pension Plan an amount sufficient to satisfy the deficiencies in each plan (the “**CA Pension Decision**”).
19. The US Trustee, Sun and the Monitor, on behalf of Indalex Limited, filed applications for leave to appeal the CA Pension Decision to the Supreme Court of Canada (the “**SCC Leave Applications**”). The SCC Leave Applications were granted by the Supreme Court of Canada on December 1, 2011.

20. The appeal of the CA Pension Decision was heard by the Supreme Court of Canada on June 5, 2012.
21. On February 1, 2013, the Supreme Court of Canada released its decision (the “**SCC Decision**”), allowing the appeals of the US Trustee, Sun and the Monitor. The Supreme Court of Canada found that the deemed trust provision contained in the PBA does not apply to the wind-up deficit of a pension plan that has not been wound up (as the Executive Pension Plan was at the time). With respect to wound up pension plans (as the Salaried Pension Plan was at the time), the majority of the Court determined that the PBA deemed trust applies to the wind-up deficiency as set out in the PBA. However, the SCC found that the DIP Charge granted by the CCAA judge trumped the provincial PBA deemed trust.
22. The Supreme Court of Canada also determined that Indalex, as the employer-administrator of both the Salaried Pension Plan and the Executive Pension Plan, had breached its fiduciary duty to plan members when it sought approval of the DIP Loan and DIP Charge without taking steps to ensure that its pension plan beneficiaries had the opportunity to have their interests effectively represented. Indalex did not breach its fiduciary duties by considering, seeking or obtaining CCAA protection (or by failing to give notice of the initial CCAA application), nor did it breach its duties by making a bankruptcy application. However, the majority of the Supreme Court of Canada agreed that the outcome of the restructuring would have been no different had the members been represented by a third party or been given notice of the DIP approval motion and determined that the imposition of a constructive trust was not appropriate. As a result, the Supreme Court of Canada reversed the decision of the Court of Appeal with respect to the constructive trust.
23. On March 15, 2013, having first notified the primary stakeholders of its intent to do so, the Monitor paid the US Trustee US\$10,751,247.22 pursuant to the Approval and Vesting Order in settlement of the Subrogated DIP Claim.

PURPOSE OF REPORT

24. The Monitor has filed reports on various matters relating to the CCAA Proceedings. This, the Monitor's Twentieth Report, is filed in support of the Monitor's motion for an extension of the Stay Period to October 31, 2013.
25. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
26. Except as described in this Report:
 - a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
27. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
28. The Monitor has prepared this Report in connection with the motion described in the Monitor's Notice of Motion dated June 14, 2013, returnable June 26, 2013. The Report should not be relied on for other purposes.

29. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor, the Initial Order or other Orders issued in the CCAA Proceedings.

ENTITLEMENT TO THE ESTATE FUNDS

30. The Monitor is currently holding approximately US\$918,090.72 and C\$4,228,629.54, which amounts are available for distribution to the creditors of the estate, subject to the payment of the legal and professional costs to complete the estate (the “**Estate Funds**”).
31. A number of parties are asserting priority claims to the Estate Funds. Accordingly, on May 29, 2013, the Monitor filed a notice of motion for advice and direction from the Court concerning the scheduling of one or more motions to determine certain questions of law regarding certain claims against Indalex and the entitlement to the Estate Funds.
32. The motion was heard on May 31, 2013 and on June 10, 2013, the Honourable Mr. Justice Campbell issued an Order (the “**May 31 Order**”) which contemplates the hearing of two motions.
33. The first of the two motions contemplated by the May 31 Order, to be heard on July 24, 2013, seeks the Court’s advice and direction on the following issues:
- a) Whether or not the beneficiaries of the Executive Plan are precluded from asserting a deemed trust over any accounts or inventory of Indalex Limited and their proceeds as a result of the doctrine of *res judicata*; and
 - b) Whether the US Trustee is entitled to claim interest and costs in respect of the DIP Loan and whether such claim is entitled to priority over the claims of the other Responding Parties, other than any claims secured by the Directors’ Charge (up to a maximum of US\$1.0 million).

34. The second of the two motions contemplated by the May 31 Order, to be heard on a date to be set by the Court, seeks the Court's advice and direction on the following issues:
- a) Unless the Court has determined that the Executive Plan members cannot advance a deemed trust claim against any accounts or inventory of Indalex Limited or their proceeds, whether the deemed trust claimed by the Executive Plan arising from the wind up order dated August 27, 2010, with an effective date of September 30, 2009, is enforceable against any accounts or inventory of Indalex Limited or their proceeds;
 - b) What would be the effect of a bankruptcy order on the existence, enforceability and priority of the deemed trust in favour of the Salaried Plan and, subject to the decision of the Court with respect to the First Motion, the deemed trust asserted by the Executive Plan members;
 - c) Whether the beneficiaries of the Salaried Plan or, unless the Court has decided that the beneficiaries of the Executive Plan are precluded from asserting a deemed trust over any accounts or inventory of Indalex Limited or their proceeds, the Executive Plan are "secured creditors" of Indalex Limited for purposes of the Bankruptcy and Insolvency Act and, if so, what would the priority of such claims be in a bankruptcy and
 - d) Whether the administrator of the Salaried Plan and the administrator of the Executive Plan are "secured creditors" of Indalex Limited for purposes of the Bankruptcy and Insolvency Act and, if so, what would the priority of such claims be in a bankruptcy.

35. The motions contemplated by the May 31 Order and described above are intended, in the absence of a negotiated settlement, to determine some, but not all, of the legal issues that would need to be determined prior to distributing the Estate Funds and were chosen because they do not require substantial findings of fact.
36. It is anticipated that, in the absence of a negotiated settlement, prior to any distribution being made it would also be necessary to obtain a determination of a number of additional legal and factual issues, including, *inter alia*:
- a) Whether the deemed trust claimed by the Executive Plan arising from the wind up order dated August 27, 2010, with an effective date of September 30, 2009, is enforceable against any accounts or inventory of Indalex Limited and the proceeds thereof;
 - b) What would be the effect of a bankruptcy order on the existence, enforceability and priority of the deemed trust in favour of the Salaried Plan and the deemed trust asserted by the Executive Plan members;
 - c) Whether the beneficiaries of the Salaried Plan or the Executive Plan are “secured creditors” of Indalex Limited for purposes of the Bankruptcy and Insolvency Act and, if so, what would the priority of such claims be in a bankruptcy;
 - d) Whether the Salaried Plan Administrator and the Executive Plan Administrator are “secured creditors” of Indalex Limited for purposes of the Bankruptcy and Insolvency Act and, if so, what would the priority of such claims be in a bankruptcy;
 - e) Whether accounts or inventory that were located outside of Ontario and the proceeds thereof are covered by the deemed trust created pursuant to section 57(4) of the PBA;

- f) Whether members of the Salaried Plan and the Executive Plan that are not Ontario residents are entitled to the benefit of the deemed trust created pursuant to section 57(4) of the PBA;
- g) What is the actual amount of the windup deficiency of the Salaried Plan or the Executive Plan under the PBA;
- h) What amount of the funds held by the Monitor is proceeds of accounts and inventory as referenced in section 30(7) of the Ontario PPSA; and
- i) Whether the Sun Claim is valid and enforceable and has priority.

EXTENSION OF STAY PERIOD

37. The Stay Period currently expires on June 28, 2013. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including, *inter alia*:
- a) The determination of the D&O Motion;
 - b) The determination of entitlement to the Estate Funds; and
 - c) The distribution of the Estate Funds.
38. As at the date of this report, the Monitor holds cash on hand in excess of \$5 million. Accordingly, there is sufficient funding for the extension of the Stay Period.
39. The Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to October 31, 2013.
40. The Monitor also believes that the Applicants have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

41. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay Period until October 31, 2013.

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

Dated this 14th day of June, 2013.

FTI Consulting Canada ULC
in its capacity as the Monitor of
Indalex Limited, Indalex Holdings (B.C.) Ltd.,
6326765 Canada Inc. and Novar Inc.
and not in its personal or corporate capacity



Nigel D. Meakin
Senior Managing Director