

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 BOB KAVANAUGH
(Sworn August 12, 2009)

I, Bob Kavanaugh, of the City of Lincolnshire, in the State of Illinois, United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the former Vice-President, Corporate Controller, of Indalex Limited ("Indalex") and as such 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.
2. This affidavit is sworn in support of the Applicants' request for dismissal of the motions brought by certain retired executives¹ (collectively, the "SERP Group") and the United Steelworkers (the "Union"). Both the SERP Group and the Union request, *inter alia*, a declaration that the proceeds derived from the sale of Indalex's assets are subject to a deemed trust for the benefit of beneficiaries of certain pension plans administered by Indalex.

¹ Keith Carruthers, Leon Kozierok, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie and Neil Fraser.

3. The Union seeks relief in connection with the Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies, registered with the Financial Services Commission of Ontario ("FSCO") and the Canadian Revenue Agency ("CRA") under Registration No. 0533646 (the "Salaried Plan").
4. The SERP Group seeks relief in connection with the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies, registered with the FSCO and CRA under Registration No. 0455626 (the "Executive Plan").

Salaried Plan

5. Indalex is the sponsor and administrator of the Salaried Plan. The Salaried Plan is in the process of being fully wound up with an effective date of December 31, 2006 (the "Effective Date"). The Salaried Plan consists of both a defined benefit (DB) component and a defined contribution (DC) component. No pensions have accrued under the Salaried Plan since December 31, 2006.
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6. All current service contributions have been made to the Salaried Plan.
 7. As at the Effective Date, the DB component of the Salaried Plan had an estimated wind-up deficiency of \$1,655,200. Attached hereto as Exhibit "A" is an actuarial valuation report on the wind-up of the DB component of the Salaried Plan, effective December 31, 2006. Indalex has been amortizing the wind-up deficiency in the Salaried Plan by means of special payments to the plan payable over five years from the Effective Date. The last special payment is scheduled to be made on December 31, 2011.

8. In 2007, Indalex made total special payments of \$709,013 to the Salaried Plan.
9. In 2008, Indalex made total special payments of \$875,313 to the Salaried Plan.
10. As at December 31, 2008, the DB component of the Salaried Plan had an estimated wind-up deficiency of \$1,795,600.
11. In April, 2009, Indalex made a special payment of \$601,000 to the Salaried Plan.
12. In June, 2009, Indalex filed with FSCO an actuarial valuation in respect of the DB component of the Salaried Plan with an effective date of December 31, 2008. This actuarial valuation indicated that an additional "catch-up" special payment of \$25,100, plus interest accruing from January 1, 2009, was required to be made to the DB component of the Salaried Plan at the time of filing the valuation with FSCO. This special payment has not been made to the Salaried Plan because paragraph 7(a) of the Initial Order of the Honourable Mr. Justice Morawetz dated ~~April 3, 2009 (as amended and restated)~~ prohibited Indalex from making any special payments to its pension plans after filing for protection under the *Companies' Creditors Arrangement Act*. No other contributions are or will be required to be made to the Salaried Plan during 2009.
13. Since July 1, 2006, the assets of the DB component of the Salaried Plan have been entirely invested in fixed income securities in order to immunize the fund from fluctuations in the stock market.

14. The market value of the assets of the DB component of the Salaried Plan as at June 30, 2009 was \$17,736,339. Attached hereto as Exhibit "B" is a copy of the Statement of Net Assets available for Benefits as of June 30, 2009.

Executive Plan

15. Indalex is the sponsor and administrator of the Executive Plan. The Executive Plan is a defined benefit pension plan and is an ongoing plan that has not been fully wound up.
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.

SWORN BEFORE ME at the City of)
 Lincolnshire, in the State of Illinois)
 this 16 day of August, 2009.)
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 A NOTARY PUBLIC)

Bob Kavanaugh
 BOB KAVANAUGH

