

**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
(ADVICE AND DIRECTIONS)**

FTI Consulting Canada ULC, the Court-appointed Monitor (the "**Monitor**") of Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (collectively, the "**Applicants**"), will make a motion to the Court on Friday, May 31, 2013 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:

1. Advice and directions from the Court concerning the scheduling of one or more motions to determine certain questions of law regarding certain claims against Indalex Limited and the remaining proceeds of sale realized pursuant to an agreement of purchaser and sale among, *inter alia*, Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. and SAPA Canada Inc. made as of June 16, 2009 (the "**Sale Proceeds**");

- (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).
 - (c) 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 their proceeds?
 - (d) 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?
 - (e) 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?
 - (f) 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?
2. An order approving the Fifteenth Report of the Monitor and the Nineteenth Report of the Monitor and the activities of the Monitor described therein.

THE GROUNDS OF THE MOTION ARE:

1. Those grounds set forth in the Nineteenth Report of the Monitor;
2. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

3. 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:

1. The Fifteenth Report of the Monitor dated April 26, 2011;
2. The Nineteenth Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

May 29, 2013

STIKEMAN ELLIOTT LLP

Barristers and Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Ashley John Taylor LSUC No.: 39932E

Tel: (416) 869-5236

Fax: (416) 947-0866

Lawyers for the Monitor

**IN 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.**

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(ADVICE AND DIRECTIONS)**

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Ashley John Taylor LSUC No.: 39932E

Tel: (416) 869-5236

Fax: (416) 947-0866

Lawyers for the Monitor

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

THE HONOURABLE MR.) FRIDAY, THE 31ST DAY
)
JUSTICE CAMPBELL) OF MAY, 2013

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.

**ORDER
(Advice and Directions)**

THIS MOTION, made by FTI Consulting Canada ULC, the Court-appointed Monitor (the “**Monitor**”) of Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the “**Applicants**”), for advice and directions concerning the scheduling of a motion to determine certain questions of law regarding certain claims against some or all of the remaining proceeds of sale realized pursuant to an agreement of purchase and sale among, *inter alia*, Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. and SAPA Canada Inc. made as of June 16, 2009, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Nineteenth Report of the Monitor dated May 29th, 2013 (the “**Nineteenth Report**”), the Fifteenth Report of the Monitor dated April 26, 2011 (the “**Fifteenth Report**”) and on hearing the submissions of counsel to the Monitor, the Superintendent of Financial Services, Morneau Shepell Ltd., the United Steelworkers, certain retired executives of Indalex Limited, George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the U.S. Indalex Debtors (the “**US Trustee**”),

and Sun Indalex Finance, LLC, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged, if necessary, and that the motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

MONITOR'S MOTION

2. **THIS COURT ORDERS** that the Monitor shall serve a motion record, including a notice of motion and report of the Monitor (the "**Twentieth Report**"), on the Superintendent of Financial Services, Morneau Shepell Ltd., the United Steelworkers, certain retired executives of Indalex Limited, the US Trustee, Sun Indalex Finance, LLC (collectively, the "**Responding Parties**") and the CCAA Service List by June 21, 2013, seeking the Court's advice and direction on the following issues (the "**Motion**"):

- (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*;
- (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);
- (c) 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 their proceeds;

- (d) 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;
- (e) 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; and
- (f) 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.

3. **THIS COURT ORDERS** that, subject to further order of the Court, if any party other than the Responding Parties wishes to participate in the Motion then they shall give notice to the Monitor and the Responding Parties prior to June 14, 2013, and shall comply with the schedule set forth herein as if a Responding Party.

4. **THIS COURT ORDERS** that the Responding Parties shall serve and file any responding materials, including any additional evidence not contained in the Twentieth Report or a factum, setting forth their positions on the legal issues raised in the Motion by no later than July 5, 2013.

5. **THIS COURT ORDERS** that the Responding Parties shall serve and file any reply materials, including any additional evidence or a factum, setting forth their response to the responding materials served and filed by any other Responding Party by no later than July 19, 2013.

6. **THIS COURT ORDERS** that the Motion shall be heard on ● [prior to July 25, 2013].

MONITOR'S ACTIVITIES

7. **THIS COURT ORDERS** that the Fifteenth Report and the Nineteenth Report and the activities of the Monitor as described therein are hereby approved.

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

Court File No: **09-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.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(Advice and Directions)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236
Fax: (416) 947-0866

Lawyers for the FTI Consulting Canada ULC

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

THE HONOURABLE MR.) FRIDAY, THE 31ST DAY
)
JUSTICE CAMPBELL) OF MAY, 2013

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.

**ORDER
(Advice and Directions)**

THIS MOTION, made by FTI Consulting Canada ULC, the Court-appointed Monitor (the “**Monitor**”) of Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the “**Applicants**”), for advice and directions concerning the scheduling of motions to determine certain questions of law regarding certain claims against some or all of the remaining proceeds of sale realized pursuant to an agreement of purchase and sale among, *inter alia*, Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. and SAPA Canada Inc. made as of June 16, 2009, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Nineteenth Report of the Monitor dated May 29, 2013 (the “**Nineteenth Report**”), the Fifteenth Report of the Monitor dated April 26, 2011 (the “**Fifteenth Report**”) and on hearing the submissions of counsel to the Monitor, the Superintendent of Financial Services, Morneau Shepell Ltd., the United Steelworkers, certain retired executives of Indalex Limited, George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates of the U.S. Indalex Debtors (the “**US Trustee**”),

and Sun Indalex Finance, LLC, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged, if necessary, and that the motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

MONITOR'S FIRST MOTION

2. **THIS COURT ORDERS** that the Monitor shall serve a motion record, including a notice of motion and report of the Monitor (the "**Twentieth Report**"), on the Superintendent of Financial Services, Morneau Shepell Ltd., the United Steelworkers, certain retired executives of Indalex Limited, the US Trustee, Sun Indalex Finance, LLC (collectively, the "**Responding Parties**") and the CCAA Service List by June 21, 2013, seeking the Court's advice and direction on the following issues (the "**First Motion**"):

- (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).

3. **THIS COURT ORDERS** that, subject to further order of the Court, if any party other than the Responding Parties wishes to participate in the First Motion then they shall give notice to the Monitor and the Responding Parties prior to June 14, 2013, and shall comply with the schedule set forth herein as if a Responding Party.

4. **THIS COURT ORDERS** that the Responding Parties shall serve and file any responding materials, including any additional evidence not contained in the Twentieth Report or a factum, setting forth their positions on the legal issues raised in the First Motion by no later than July 5, 2013.

5. **THIS COURT ORDERS** that the Responding Parties shall serve and file any reply materials, including any additional evidence or a factum, setting forth their response to the responding materials served and filed by any other Responding Party by no later than July 19, 2013.

6. **THIS COURT ORDERS** that the First Motion shall be heard on ● [prior to July 25, 2013].

MONITOR'S SECOND MOTION

7. **THIS COURT ORDERS** that, unless the Court has determined that the US Trustee is entitled to a priority claim that ranks ahead of the other Responding Parties, the Monitor shall serve a motion record, including a notice of motion and report of the Monitor (the “**Twenty-First Report**”), if required, on the appropriate Responding Parties and the CCAA Service List by August 9, 2013, seeking the Court’s advice and direction on the following issues (the “**Second Motion**”):

- (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.

8. **THIS COURT ORDERS** that, subject to further order of the Court, if any party other than the Responding Parties wishes to participate in the Second Motion then they shall give notice to the Monitor and the Responding Parties prior to June 14, 2013 and shall comply with the schedule set forth herein as if a Responding Party.

9. **THIS COURT ORDERS** that the Responding Parties shall serve and file any responding materials, including any additional evidence not contained in the Twentieth Report or the Twenty-First Report or a factum, setting forth their positions on the legal issues raised in the Second Motion by no later than August 30, 2013.

10. **THIS COURT ORDERS** that the Responding Parties shall serve and file any reply materials, including any additional evidence or a factum, setting forth their response to the responding materials served and filed by any other Responding Party by no later than September 13, 2013.

11. **THIS COURT ORDERS** that the Second Motion shall be heard on ● [during the week of September 16, 2013].

MONITOR'S ACTIVITIES

12. **THIS COURT ORDERS** that the Fifteenth Report and the Nineteenth Report and the activities of the Monitor as described therein are hereby approved.

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

Court File No: **09-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.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

O R D E R

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236
Fax: (416) 947-0866

Lawyers for the FTI Consulting Canada ULC