

**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.**

**MOTION RECORD  
(Motion Returnable November 10, 2010)**

October 13, 2010

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

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
**Lesley Mercer** LSUC#: 54491E  
Tel: (416) 869-6859  
Fax: (416) 947-0866

Lawyers for the Monitor FTI Consulting  
Canada ULC

TO: THE SERVICE LIST

# Index

**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.**

**INDEX**

TAB	DOCUMENT	PAGE(S)
1.	Notice of Motion dated October 13, 2010	1-6
2.	The Affidavit of Kaitlin Brown sworn October 13, 2010	7-9
A.	<i>Exhibit 'A'</i> Proof of D&O Claim of Bertram McBride dated August 28, 2009	10-14
B.	<i>Exhibit 'B'</i> Proof of D&O Claim of Eugene D'Iorio dated August 28, 2009	15-19
C.	<i>Exhibit 'C'</i> Proof of D&O Claim of Frederick Granville dated August 28, 2009	20-24
D.	<i>Exhibit 'D'</i> Proof of D&O Claim of John Faveri dated August 28, 2009	25-29
E.	<i>Exhibit 'E'</i> Proof of D&O Claim of John Rooney dated August 28, 2009	30-34



F.	<i>Exhibit 'F'</i>	Proof of D&O Claim of Keith Carruthers dated August 28, 2009	35-39
G.	<i>Exhibit 'G'</i>	Proof of D&O Claim of Leon Kozierok dated August 28, 2009	40-44
H.	<i>Exhibit 'H'</i>	Proof of D&O Claim of Max Degen dated August 28, 2009	45-49
I.	<i>Exhibit 'I'</i>	Proof of D&O Claim of Neil Fraser dated August 28, 2009	50-53
J.	<i>Exhibit 'J'</i>	Proof of D&O Claim of Richard Benson dated August 28, 2009	54-58
K.	<i>Exhibit 'K'</i>	Proof of D&O Claim of Richard Smith dated August 28, 2009	59-63
L.	<i>Exhibit 'L'</i>	Proof of D&O Claim of Robert Leckie dated August 28, 2009	64-68
M.	<i>Exhibit 'M'</i>	Proof of D&O Claim of Robert Waldron dated August 28, 2009	69-73
N.	<i>Exhibit 'N'</i>	Proof of D&O Claim of Irene Wagner (Secured) dated August 24, 2009	74-86
O.	<i>Exhibit 'O'</i>	Proof of D&O Claim of Irene Wagner (Unsecured) dated August 24, 2009	87-99
P.	<i>Exhibit 'P'</i>	Proof of D&O Claim of the Official Committee of Unsecured Creditors dated August 27, 2009	100-188
Q.	<i>Exhibit 'Q'</i>	Proof of D&O Claim of Revenue Quebec dated August 18, 2009	189-195
R.	<i>Exhibit 'R'</i>	Draft Proof of D&O Claim of the United Steelworkers dated September 29, 2010	196-200
3.		The Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009	201-222
4.		Approval and Vesting Order of the Honourable Mr. Justice Campbell dated July 20, 2009	223-246

5.	Endorsement of the Honourable Mr. Justice Morawetz dated July 24, 2009	247-250
6.	The Claims Procedure Order of the Honourable Mr. Justice Morawetz dated July 30, 2009	251-277
7.	The Order (Increase to Monitor's Powers and Stay Extension) of the Honourable Mr. Justice Morawetz dated October 27, 2009	278-284
8.	Reasons for Decision of the Honourable Mr. Justice Campbell dated February 18, 2010	285-295
9.	Endorsement of the Court of Appeal for Ontario dated March 24, 2010	296
10.	The Twelfth Report of the Monitor dated April 28, 2010	297-308
11.	Order of the Honourable Mr. Justice Lederman dated August 5, 2010	309-311
12.	Draft Order for Discharge of Director's Charge	312-316

# TAB 1

**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.**

**NOTICE OF MOTION**

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 November 10, 2010 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. An order abridging the time for service of the Notice of Motion, Motion Record and Factum, if necessary, and direction that any further service of the Notice of Motion, Motion Record and Factum be dispensed with;
2. An Order declaring that none of the D&O Claims (as defined in the Claims Procedure Order of the Honourable Mr. Justice Morawetz dated July 30, 2009 (the "**Claims Procedure Order**")) received by the Monitor, including the draft

D&O Claim filed by the United Steelworkers are claims for which the Applicants are required to indemnify their directors and officers pursuant to paragraph 21 of the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 (the “Initial Order”) and;

3. An Order terminating, discharging and releasing the Directors’ Charge from the Property (as defined in the Initial Order).

**THE GROUNDS OF THE MOTION ARE:**

1. Pursuant to paragraph 21 of the Initial Order, the Applicants indemnified their respective directors and officers from “all claims, costs, charges and expenses relating to the failure of the Applicants, after the date of [the Initial Order], to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b), 9(c) and 9(d) of [the Initial Order] which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct”;
2. Pursuant to paragraph 22 of the Initial Order, the directors and officers of the Applicants were granted the benefit of a charge on the Property (not to exceed the amount of US\$3,300,000 in the aggregate) as security for the indemnity provided in paragraph 21 of the Initial Order;
3. Pursuant to the Claims Procedure Order, the Monitor solicited D&O Claims. 17 Proofs of D&O Claims (as defined in the Claims Procedure Order) were received by the Monitor by the Claims Bar Date from: (a) various retirees of Indalex Limited; (b) the Official Unsecured Creditors Committee in the Ch.11 Proceedings; (c) an ex-employee; and (d) Revenue Quebec. In addition, on

September 29, 2010, the United Steelworkers filed a draft Proof of D&O Claim with the Monitor.

4. In order to distribute the remainder of the proceeds of sale it is necessary to determine whether there are any valid claims against the Directors' Charge;
5. Based on its review of the Proofs of D&O Claim filed, the Monitor has formed the opinion that these D&O Claims are not claims for which the Applicants are required to indemnify their directors and officers pursuant to paragraph 21 of the Initial Order, and therefore the Directors' Charge can and should be released;
4. Paragraphs 7, 8, 9, 20, 21, 22, 23, 25(l) and 52 of the Initial Order;
5. Paragraphs 2, 9, 10 and 20 of the Claims Procedure Order;
6. Paragraph 5 of the Order (Increase to Monitor's Powers and Stay Extension) of the Honourable Mr. Justice Morawetz dated October 27, 2009;
7. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
8. The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended; and
9. 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 Affidavit of Kaitlin Brown sworn October 13, 2010 and the exhibits thereto;

2. The Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009;
3. Approval and Vesting Order of the Honourable Mr. Justice Campbell dated July 20, 2009;
4. Endorsement of the Honourable Mr. Justice Morawetz dated July 24, 2009;
5. The Claims Procedure Order of the Honourable Mr. Justice Morawetz dated July 30, 2009;
6. The Order (Increase to Monitor's Powers and Stay Extension) of the Honourable Mr. Justice Morawetz dated October 27, 2009;
7. Reasons for Decision of the Honourable Mr. Justice Campbell dated February 18, 2010;
8. Endorsement of the Court of Appeal for Ontario dated March 24, 2010;
9. The Twelfth Report of the Monitor dated April 28, 2010;
10. Order of the Honourable Mr. Justice Lederman dated August 5, 2010;
11. Affidavit of Keith Cooper, sworn August 24, 2009;
12. Affidavit of Bob Kavanaugh, sworn August 12, 2009;
13. USW Notice of Motion, dated August 5, 2009;
14. Retirees Notice of Motion, dated August 5, 2009; and
15. Such further and other materials as counsel may advise and this Honourable Court may permit.

October 13, 2010

**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  
**Lesley Mercer LSUC No.: 54491E**  
Tel: (416) 869-6859  
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**

**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.**

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

**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

**Lesley Mercer LSUC No.: 54491E**  
Tel: (416) 869-6859  
Fax: (416) 947-0866

Lawyers for the Monitor

# TAB 2

**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 KAITLIN BROWN  
(sworn October 13, 2010)**

I, Kaitlin Brown, of the Town of Whitby, Regional Municipality of Durham,  
MAKE OATH AND SAY:

1. I am a legal assistant in the law firm of Stikeman Elliott LLP, solicitors for the Monitor, FTI Consulting Canada ULC, and as such, have knowledge of the matters hereinafter referred to.
2. I have been advised by Lesley Mercer and do verily believe that the following D&O Proofs of Claim, attached as Exhibits 'A' through 'G', were received by the Monitor by August 28, 2009, the Claims Bar Date.
3. Attached hereto as Exhibit 'A' is the Proof of D&O Claim of Bertram McBride dated August 28, 2009.
4. Attached hereto as Exhibit 'B' is the Proof of D&O Claim of Eugene D'Iorio dated August 28, 2009.

5. Attached hereto as Exhibit 'C' is the Proof of D&O Claim of Frederick Granville dated August 28, 2009.
6. Attached hereto as Exhibit 'D' is the Proof of D&O Claim of John Faveri dated August 28, 2009.
7. Attached hereto as Exhibit 'E' is the Proof of D&O Claim of John Rooney dated August 28, 2009.
8. Attached hereto as Exhibit 'F' is the Proof of D&O Claim of Keith Carruthers dated August 28, 2009.
9. Attached hereto as Exhibit 'G' is the Proof of D&O Claim of Leon Kozierok dated August 28, 2009.
10. Attached hereto as Exhibit 'H' is the Proof of D&O Claim of Max Degen dated August 28, 2009.
11. Attached hereto as Exhibit 'I' is the Proof of D&O Claim of Neil Fraser dated August 28, 2009.
12. Attached hereto as Exhibit 'J' is the Proof of D&O Claim of Richard Benson dated August 28, 2009.
13. Attached hereto as Exhibit 'K' is the Proof of D&O Claim of Richard Smith dated August 28, 2009.
14. Attached hereto as Exhibit 'L' is the Proof of D&O Claim of Robert Leckie dated August 28, 2009.
15. Attached hereto as Exhibit 'M' is the Proof of D&O Claim of Robert Waldron dated August 28, 2009.

16. Attached hereto as Exhibit 'N' is the Proof of D&O Claim of Irene Wagner (Secured) dated August 24, 2009.

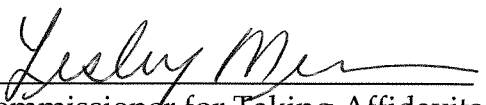
17. Attached hereto as Exhibit 'O' is the Proof of D&O Claim of Irene Wagner (Unsecured) dated August 24, 2009.

18. Attached hereto as Exhibit 'P' is the Proof of D&O Claim of the Official Committee of Unsecured Creditors dated August 27, 2009.

19. Attached hereto as Exhibit 'Q' is the Proof of D&O Claim of Revenue Quebec dated August 18, 2009.

20. I am advised by Lesley Mercer and do verily believe that a draft Proof of D&O Claim of the United Steelworkers, dated September 29, 2010, was received on that date. A copy of the draft proof of D&O is attached hereto as Exhibit 'R'.

SWORN BEFORE ME at the City of Toronto, on October 13, 2010.

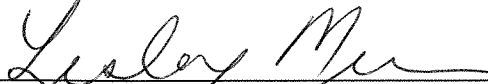
  
Commissioner for Taking Affidavits

  
Kaitlin Brown

# TAB A

**THIS IS EXHIBIT "A"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
A Commissioner for Taking Affidavits

RECEIVED  
AUG 28 2009

Schedule "5"

---

PROOF OF D&O CLAIM

---

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

---

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

---

A. PARTICULARS OF D&O CREDITOR

1. Full Legal Name of D&O Creditor: BERTRAM GERALD ARTHUR MCBRIDE (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
2. Full Mailing Address of the Creditor:  
C/O ROSKIE MINSEY LLP  
20 QUEEN ST. W., SUITE 900, BOX 52  
TORONTO, ON, CANADA M5H 3R3
3. Telephone Number of Creditor: 416. 595. 2150 <sup>1</sup>
4. Facsimile Number of Creditor: 416. 204. 2874 Error! Bookmark not defined.
5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

---

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.



6. Email address: amckinnon@kmtkwa.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM: (on behalf of Bertram Gerald Arthur McBride)

I, Voskie Minsey w/o Arthur McBride [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):  
X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows: priority charge amount

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis,  
I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 2 \$ 482,905.00 Cdn on an unsecured basis 2 TBD by actuary

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056). (see below)

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	<u>1</u> \$ <u>2,000.00</u>	\$ <u>482,905.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Timothy Stubbs	<u>1</u> \$ <u>2,000.00</u>	\$ <u>482,905.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Patricia Lawlor	<u>1</u> \$ <u>2,000.00</u>	\$ <u>482,905.00</u> <u>2</u> TBD by actuary
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

- 1) Ceased supplemental pension benefit payments
- 2) Underfunded registered pension to be wound up in deficit

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

*A reduction of monthly pension benefits will occur due to the wind-up of the Indalex registered pension plan in its state of deficit. An actuarial calculation of this loss will be prepared once loss is finalised.*

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

*Pension / wage superpriority charge*

Estimated value of security outlined above as at the date of the D&O Claim:

*\$2,000.00*

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned	\$ _____
Amount of Total D&O Claim Not Assigned	\$ _____

Total Amount of D&O Claim	\$ _____
---------------------------	----------

(should equal "Total D&O Claim" as entered on Section B)

2. Full Mailing Address of Assignee(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

E. FILING OF D&O CLAIMS:

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

[Signature]  
(Signature of Witness)

Desi Skarceva  
(Please print name)

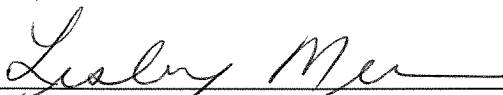
[Signature]  
(Signature of individual completing this form)

Andrea McKinnon  
(Please print name)

# TAB B

**THIS IS EXHIBIT "B"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
\_\_\_\_\_  
*A Commissioner for Taking Affidavits*

RECEIVED  
AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: EUGENE JOHN D'ORIO JR (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSCIEMINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 52  
TORONTO, ON CANADA M5H 3K3
- 3. Telephone Number of Creditor: 416 595-2150 1
- 4. Facsimile Number of Creditor: 416-204-2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKINNAU Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, Kiskie Minsky LLP (on behalf of Eugene John D'lorio Jr.) [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis,  
I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim ① \$ 490,696.00 Cdn on an unsecured basis ② TBD by actuary (see below)

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	① \$ <u>2,000.00</u>	\$ <u>490,696.00</u> ② TBD by actuary
<input checked="" type="checkbox"/> Timothy stubbs	① \$ <u>2,000.00</u>	\$ <u>490,696.00</u> ② TBD by actuary
<input checked="" type="checkbox"/> Patricia Lawlor	① \$ <u>2,000.00</u>	\$ <u>490,696.00</u> ② TBD by actuary
<input type="checkbox"/>		

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

- (1) Ceased supplemental pension benefit payments.
- (2) Underfunded registered pension to be wound up in deficit

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction to monthly pension benefits will occur due to the wind up of the Indalex Registered Pension Plan in its state of deficit. An actuarial calculation of this loss will be prepared once loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority charge

Estimated value of security outlined above as at the date of the D&O Claim:

\$2,000.00

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_

Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_

Total Amount of D&O Claim \$ \_\_\_\_\_

(should equal "Total D&O Claim" as entered on Section B)

2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:


Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

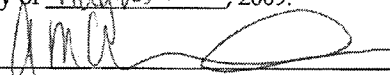
Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

  
(Signature of Witness)

Desi Skokovic  
(Please print name)

  
(Signature of individual completing this form)

Andrea Milkinson  
(Please print name)

**TAB C**

**THIS IS EXHIBIT "C"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



---

*A Commissioner for Taking Affidavits*

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: FREDERICK JOHN GRANVILLE (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 52  
TORONTO, ON (CANADA) M5H 3R3
- 3. Telephone Number of Creditor: 416. 595. 2150 1
- 4. Facsimile Number of Creditor: 416. 204. 2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kaskaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, Koskie Minsky LP (on behalf of Frederick John Grant) [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 1 \$ 20,422.00 Cdn on an unsecured basis 2 TBD by actuary

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056. (See below)

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	\$ <u>2,000.00</u>	\$ <u>20,422.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Timothy Stubbs	\$ <u>2,000.00</u>	\$ <u>20,422.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Patricia Lawlor	\$ <u>2,000.00</u>	\$ <u>20,422.00</u> <u>2</u> TBD by actuary
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:  
1) Canceled supplemental pension benefit payments.  
2) Underfunded registered pension to be wound up in deficit.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

*A reduction to monthly pension benefits will occur due to the wind-up of the Invallex registered pension plan in its state of deficit. An actuarial calculation of this will be prepared once loss is finalized.*

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

*Pension/wage superpriority charge.*

Estimated value of security outlined above as at the date of the D&O Claim:

*\$ 5,000.00*

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned	\$ _____
Amount of Total D&O Claim Not Assigned	\$ _____

Total Amount of D&O Claim	\$ _____
(should equal "Total D&O Claim" as entered on Section B)	

2. Full Mailing Address of Assignee(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Please print name)

[Signature]  
(Signature of individual completing this form)

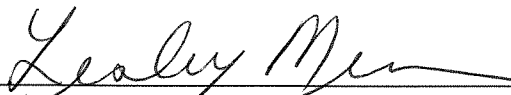
ANDREA McMINN  
(Please print name)

# TAB D



**THIS IS EXHIBIT "D"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



*A Commissioner for Taking Affidavits*

RECEIVED  
AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: JOHN EUGENE FAVERI (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, Box 50  
TORONTO, ON CANADA M5H 3R3
- 3. Telephone Number of Creditor: 416 595 2150 <sup>1</sup>
- 4. Facsimile Number of Creditor: 416 204 2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

**B. PROOF OF D&O CLAIM:**

I, Kosien Minkylec (on behalf of John Eugene Fawcett) [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):  
X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 1 \$ 51,114.00 Cdn on an unsecured basis 2 TBS by actuary (see below)

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

**C. PARTICULARS OF D&O CLAIM:**

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	\$ <u>2,000.00</u>	\$ <u>51,114.00</u> <u>2</u> TBS by actuary
<input checked="" type="checkbox"/> Timothy Stubbs	\$ <u>2,000.00</u>	\$ <u>51,114.00</u> <u>2</u> TBS by actuary
<input checked="" type="checkbox"/> Patricia Lawlor	\$ <u>2,000.00</u>	\$ <u>51,114.00</u> <u>2</u> TBS by actuary
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

1) Ceased supplemental pension benefit payments  
2) Underfunded registered pension to be wound up in deficit.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction to monthly pension benefits will occur due to the winding up of the Inland registered pension plan in its state of deficit. An actuary calculation of this loss will be prepared once loss is finalized

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority claim

Estimated value of security outlined above as at the date of the D&O Claim:

\$2,000.00

IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$
Amount of Total D&O Claim Not Assigned \$

Total Amount of D&O Claim \$
(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

Three blank lines for mailing address.

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:


Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

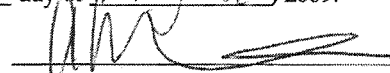
Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

  
\_\_\_\_\_  
(Signature of Witness)

Desi Skoklova  
\_\_\_\_\_  
(Please print name)

  
\_\_\_\_\_  
(Signature of individual completing this form)

ANDREA MCKINNON  
\_\_\_\_\_  
(Please print name)

# TAB E

**THIS IS EXHIBIT "E"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



*A Commissioner for Taking Affidavits*

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: JOHN WILLIAM ROONEY (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSCIE MINSKY LLP  
20 QUEEN ST. W., SUITE 900, BOX 52  
TORONTO, ON, CANADA M5H 3E3
- 3. Telephone Number of Creditor: 416. 595. 2150 1
- 4. Facsimile Number of Creditor: 416. 204. 2974 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKIMON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.



6. Email address: amckinnon@vklaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, Vessie Minskylor <sup>(on behalf of John William Remy)</sup> [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim <sup>priority charge</sup> \$ 22,933.00 Cdn on an unsecured basis <sup>TBD by actuary</sup>

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056. (See below)

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	\$ <u>2,000.00</u>	\$ <u>22,933.00</u> <sup>TBD by actuary</sup>
<input checked="" type="checkbox"/> Timothy Stubbs	\$ <u>2,000.00</u>	\$ <u>22,933.00</u> <sup>TBD by actuary</sup>
<input checked="" type="checkbox"/> Patricia Lawlor	\$ <u>2,000.00</u>	\$ <u>22,933.00</u> <sup>TBD by actuary</sup>
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

1) Ceased supplemental pension benefit payments.  
2) Underfunded registered pension to be wound up in deficit.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction to monthly pension benefits will occur due to the wind-up of the Indalee registered pension plan in its state of deficit. An actuarial calculation of this will be prepared once loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority charge

Estimated value of security outlined above as at the date of the D&O Claim:

\$ 2,000.00

IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$
Amount of Total D&O Claim Not Assigned \$

Total Amount of D&O Claim \$
(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

[Blank lines for mailing address]

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August 2009.

[Signature]  
(Signature of Witness)

Desi Skocceva  
(Please print name)


[Signature]  
(Signature of individual completing this form)

ANDREA MCKINNON  
(Please print name)

# TAB F

**THIS IS EXHIBIT "F"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
\_\_\_\_\_  
*A Commissioner for Taking Affidavits*

RECEIVED  
AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: KEITH BURTON CARRUTHERS (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 52  
TORONTO, ON CANADA M5H 3R3
- 3. Telephone Number of Creditor: 416. 595. 2150 <sup>1</sup>
- 4. Facsimile Number of Creditor: 416. 204. 2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

**B. PROOF OF D&O CLAIM:**

I, Koskie Minsky LLP [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

**Secured D&O Claim** \$ 2,000.00 Cdn on a secured basis,  
I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

**Unsecured D&O Claim** ① \$ 707,521.00 Cdn on an unsecured basis

② TBD by attorney - see below.

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

**C. PARTICULARS OF D&O CLAIM:**

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured	
<input checked="" type="checkbox"/> Danzi McCallen	<u>①</u> \$ <u>2,000.00</u>	\$ <u>707,521.00</u>	<u>②</u> TBD by attorney
<input checked="" type="checkbox"/> Timothy Stubbs	<u>①</u> \$ <u>2,000.00</u>	\$ <u>707,521.00</u>	<u>②</u> TBD by attorney
<input checked="" type="checkbox"/> Patrick Lawlor	<u>①</u> \$ <u>2,000.00</u>	\$ <u>707,521.00</u>	<u>②</u> TBD by attorney
<input type="checkbox"/>	\$ _____	\$ _____	attorney.

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

- ① Ceased supplemental pension benefit payment
- ② Underfunded registered pension to be made up in deficit

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction in monthly pension benefits will occur due to the wind up of the Indalex pension plan (registered) in its state of default. An actuarial calculation of this loss will be prepared once the loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority charge.

Estimated value of security outlined above as at the date of the D&O Claim:

\$ 2,000,000.

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_  
Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_

Total Amount of D&O Claim \$ \_\_\_\_\_  
(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

(Signature of Witness)

Desi Skoklova  
(Please print name)

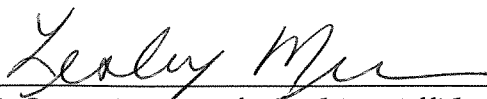
(Signature of individual completing this form)

Andrea McKinnon  
(Please print name)

# TAB G

**THIS IS EXHIBIT "G"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



---

*A Commissioner for Taking Affidavits*

Schedule "5"

---

PROOF OF D&O CLAIM

---

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

---

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

---

A. PARTICULARS OF D&O CREDITOR

1. Full Legal Name of D&O Creditor: LEON KOZIEROK (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 50  
TORONTO ON CANADA M5H 3R3
3. Telephone Number of Creditor: 416.595.2150 <sup>1</sup>
4. Facsimile Number of Creditor: 416.204.2874 Error! Bookmark not defined.
5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

---

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM:

(on behalf of Leon Kozierski)

I, Koskie Minsky LLP [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 1 \$ 984,869.00 Cdn on an unsecured basis

2 TBD by actuary (see below)

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured	
<input checked="" type="checkbox"/> David McCallen	<u>1</u> \$ <u>2,000.00</u>	\$ <u>984,869.00</u>	<u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Timothy Stubbs	<u>1</u> \$ <u>2,000.00</u>	\$ <u>984,869.00</u>	<u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Patrick Lawlor	<u>1</u> \$ <u>2,000.00</u>	\$ <u>984,869.00</u>	<u>2</u> TBD by actuary
<input type="checkbox"/>	\$ _____	\$ _____	<u>2</u> TBD by actuary

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

- (1) Ceased supplemental pension benefit payment.
- (2) Underfunded registered pension to be made up in deficit.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction in monthly pension benefits will occur due to the wind up of the Indiana registered pension plan in its state of default. An actuarial calculation of this loss will be prepared once the loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority charge

Estimated value of security outlined above as at the date of the D&O Claim:

\$21,000.00

IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned	\$ _____
Amount of Total D&O Claim Not Assigned	\$ _____

Total Amount of D&O Claim	\$ _____
(should equal "Total D&O Claim" as entered on Section B)	

2. Full Mailing Address of Assignee(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
 Indalex Holdings (B.C.) Ltd. and/or  
 6326765 Canada Inc. and/or  
 Novar Inc.  
 c/o FTI Consulting Canada ULC,  
 TD Canada Trust Tower  
 161 Bay Street, 27<sup>th</sup> Floor  
 Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
 Facsimile: (416)-572-4068  
 E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

(Signature of Witness)

Desi Stokicva  
(Please print name)

(Signature of individual completing this form)

Andrea McInnon  
(Please print name)

**TAB H**



**THIS IS EXHIBIT "H"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



---

*A Commissioner for Taking Affidavits*

46

AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: MAX DEGEN (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W., SUITE 900, BOX 52  
TORONTO, ON, CANADA M5H 3R3
- 3. Telephone Number of Creditor: 416. 595. 2150 <sup>1</sup>
- 4. Facsimile Number of Creditor: 416. 204. 2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCLINNAN Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction to monthly pension benefits will occur due to the wind up of the Indalex registered pension plan in its state of deficit. An actuarial calculation of this loss will be prepared once loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superiority charge.

Estimated value of security outlined above as at the date of the D&O Claim:

\$2,000.00

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned	\$ _____
Amount of Total D&O Claim Not Assigned	\$ _____

Total Amount of D&O Claim	\$ _____
---------------------------	----------

(should equal "Total D&O Claim" as entered on Section B)

2. Full Mailing Address of Assignee(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:


Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

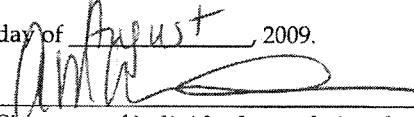
Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

  
\_\_\_\_\_  
(Signature of Witness)

DESI SKORNEVA  
\_\_\_\_\_  
(Please print name)

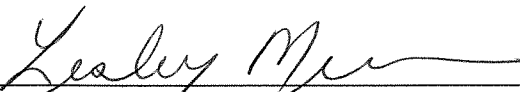
  
\_\_\_\_\_  
(Signature of individual completing this form)

Andrea McKinney  
\_\_\_\_\_  
(Please print name)

# TAB I

**THIS IS EXHIBIT "I"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
\_\_\_\_\_  
*A Commissioner for Taking Affidavits*

50

RECEIVED  
AUG 28 2009

Schedule "5"

---

PROOF OF D&O CLAIM

---

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

---

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

---

A. PARTICULARS OF D&O CREDITOR

1. Full Legal Name of D&O Creditor: NEIL EDWARD FRASER (the "Creditor").  
(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)
2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSEY LLP  
20 QUEEN ST. W. SUITE 900, BOX 50  
TORONTO, ON, CANADA M5H 3R3
3. Telephone Number of Creditor: 416.595.2150 1
4. Facsimile Number of Creditor: 416.204.2874 Error! Bookmark not defined.
5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

---

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@lcmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, Kuskie Minsky LLP (on behalf of Neil Edward Fraser) [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):  
X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 1 \$ 505,879.00 Cdn on an unsecured basis 2 TBD by actuary (see below)

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056.

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> Daniel McCallen	<u>1</u> \$ <u>2,000.00</u>	\$ <u>505,879.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Timothy Stubbs	<u>1</u> \$ <u>2,000.00</u>	\$ <u>505,879.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Patrick Lambor	<u>1</u> \$ <u>2,000.00</u>	\$ <u>505,879.00</u> <u>2</u> TBD by actuary
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

- (1) Ceased supplemental pension benefit payments
- (2) Underfunded registered pension to be wound up in deficit.



If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction to monthly pension benefits will occur due to the wind up of the Indalex registered pension plan in its state of deficit. An actuarial calculation of this loss will be prepared once the loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage Superpriority.

Estimated value of security outlined above as at the date of the D&O Claim:

\$2,000.00

IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$

Amount of Total D&O Claim Not Assigned \$

Total Amount of D&O Claim \$

(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

[Blank lines for mailing address]

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com


DATED at Toronto this 28 day of August, 2009.



(Signature of Witness)

Desi Skokleva

(Please print name)



(Signature of individual completing this form)


Andrea McKinnon

(Please print name)

# TAB J

**THIS IS EXHIBIT "J"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
\_\_\_\_\_  
*A Commissioner for Taking Affidavits*

55

RECEIVED  
AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

1. Full Legal Name of D&O Creditor: RICHARD NELSON BOWSON (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 50  
TORONTO, ON CANADA M5H 3R3
3. Telephone Number of Creditor: 416.595.2150 1
4. Facsimile Number of Creditor: 416.204.2874 Error! Bookmark not defined.
5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM: (on behalf of Richard Nelson Benson)

I, Koskie Minsky LLP [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):  
X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 1 \$ 283,787.00 Cdn on an unsecured basis 2 TBD by actuary (see below).

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056.

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	<u>1</u> \$ <u>2,000.00</u>	\$ <u>283,787.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Timothy Stubbs	<u>1</u> \$ <u>2,000.00</u>	\$ <u>283,787.00</u> <u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Patrick Lawlor	<u>1</u> \$ <u>2,000.00</u>	\$ <u>283,787.00</u> <u>2</u> TBD by actuary
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

(1) Ceased supplemental pension benefit payments.  
(2) Underfunded registered pension to be wound up in deficit.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction in monthly pension benefits will occur due to the wind up of the Instate registered pension plan in its state of deficit. An actuarial calculation of this loss will be prepared once the loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension / wage superpriority charge

Estimated value of security outlined above as at the date of the D&O Claim:

\$ 2,000.00

IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_

Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_

Total Amount of D&O Claim \$ \_\_\_\_\_

(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

[Signature]  
(Signature of Witness)

Desi Skoklieva  
(Please print name)

[Signature]  
(Signature of individual completing this form)


Andrea McKinnon  
(Please print name)



# TAB K

**THIS IS EXHIBIT "K"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



*A Commissioner for Taking Affidavits*

60

RECEIVED

AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: RICHARD DONALD SMITH (the "Creditor").
2. Full Mailing Address of the Creditor: C/O ROSKIE MINSKY LLP, 20 QUEEN ST. W. SUITE 900, Box 52, TORONTO, ON CANADA M5H 3R3
3. Telephone Number of Creditor: 416. 595. 2150
4. Facsimile Number of Creditor: 416. 204. 2874
5. Attention (Contact Person): ANDREA MCKINNAN

1 IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amckinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, KOSIE MINSKY (on behalf of RICHARD DONALD SMITH) [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$2,000.00 Cdn on a secured basis,  
I have valued my security at \$2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim \$1,367,409.00 Cdn on an unsecured basis (2) TBD by actuary

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of (See below) the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	<u>\$2,000.00</u>	<u>\$1,367,409.00</u> <u>(2) TBD by actuary</u>
<input checked="" type="checkbox"/> Timothy Stubbs	<u>\$2,000.00</u>	<u>\$1,367,409.00</u> <u>(2) TBD by actuary</u>
<input checked="" type="checkbox"/> Patrick Lawlor	<u>\$2,000.00</u>	<u>\$1,367,409.00</u> <u>(2) TBD by actuary</u>
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

1) Ceased supplemental pension benefit payments  
2) Underfunded

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction to monthly pension benefits will occur due to the wind-up of the Indale registered pension plan in its state of default. An actuarial calculation of this loss will be prepared once loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority.

Estimated value of security outlined above as at the date of the D&O Claim:

\$2,000,000.

IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$

Amount of Total D&O Claim Not Assigned \$

Total Amount of D&O Claim \$

(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.


[Signature]  
(Signature of Witness)  
DESI SPOKLEVA  
(Please print name)

[Signature]  
(Signature of individual completing this form)  
ANDRE MCKINNON  
(Please print name)

# TAB L

**THIS IS EXHIBIT "L"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



**A Commissioner for Taking Affidavits**



65  
RECEIVED  
AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: ROBERT B. LECKIE (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 52  
TORONTO, ON, CANADA M5H 3R3
- 3. Telephone Number of Creditor: 416. 595. 2150 1
- 4. Facsimile Number of Creditor: 416. 204. 2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: AMEKINNS@KAYAW.CA Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM: *(on behalf of Robert)*

I, KOSIE MINSKY / CP B. LECKIE [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):  
X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$2,000.00 *r priority charge* Cdn on a secured basis,  
I have valued my security at \$2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim \$ 371,638.00 Cdn on an unsecured basis *② TBD by actuary*

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056). *(See below)*

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> David McCallen	<u>\$2,000.00</u>	<u>\$371,638.00</u> <i>② TBD by actuary</i>
<input checked="" type="checkbox"/> Timothy Stubbs	<u>\$2,000.00</u>	<u>\$371,638.00</u> <i>② TBD by actuary</i>
<input checked="" type="checkbox"/> Patricia Lawlor	<u>\$2,000.00</u>	<u>\$371,638.00</u> <i>② TBD by actuary</i>
<input type="checkbox"/>	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

1) Ceased supplemental pension benefit payments.  
2) Underfunded registered pension to be wound up in deficit.

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

*A reduction to workable pension benefits will occur due to its wind-up of the Ecolab registered pension plan or its state of deficit. An actuarial calculation of this loss will be prepared once loss is finalized.*

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

*Pension/wage super priority charge.*

Estimated value of security outlined above as at the date of the D&O Claim:

*\$ 2,000.00*

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_  
Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_  
  
Total Amount of D&O Claim \$ \_\_\_\_\_  
(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:


Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

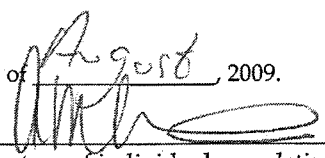
Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this \_\_\_\_\_ day of August, 2009.

  
\_\_\_\_\_  
(Signature of Witness)

Desi Skokleva  
\_\_\_\_\_  
(Please print name)

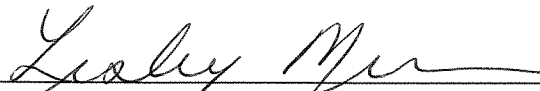
  
\_\_\_\_\_  
(Signature of individual completing this form)

Andrea McKinnon  
\_\_\_\_\_  
(Please print name)

# TAB M

**THIS IS EXHIBIT "M"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



---

*A Commissioner for Taking Affidavits*

70

RECEIVED

AUG 28 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: ROBERT KENNETH WARDEAN (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
C/O KOSKIE MINSKY LLP  
20 QUEEN ST. W. SUITE 900, BOX 52  
TORONTO, ON, CANADA M5H 3R3
- 3. Telephone Number of Creditor: 416.595.2150 1
- 4. Facsimile Number of Creditor: 416.204.2874 Error! Bookmark not defined.
- 5. Attention (Contact Person): ANDREA MCKINNON Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: amelkinnon@kmlaw.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

B. PROOF OF D&O CLAIM: I, Koskie Minsky LLP (on behalf of Robert Kenneth Waldron) [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):  
X the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 2,000.00 Cdn on a secured basis, I have valued my security at \$ 2,000.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim 1 \$ 357,138.00 Cdn on an unsecured basis

2 TBD by actuary - see below.

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured	
<input checked="" type="checkbox"/> David McLallen	<u>1</u> \$ <u>2,000.00</u>	\$ <u>357,138.00</u>	<u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Timothy Stebbins	<u>1</u> \$ <u>4,000.00</u>	\$ <u>357,138.00</u>	<u>2</u> TBD by actuary
<input checked="" type="checkbox"/> Patrick Lawlor	\$ <u>2,000.00</u>	\$ <u>357,138.00</u>	<u>2</u> TBD by actuary
<input type="checkbox"/>	\$ _____	\$ _____	

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

- 1 leased supplemental pension benefit payments.
- 2 Underfunded registered pension to be wound up in deficit.



If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

A reduction in monthly pension benefits will occur due to the wind up of the Inlandex registered pension plan in its state of deficit. An actuarial calculation of this loss will be prepared once the loss is finalized.

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

Pension/wage superpriority charge

Estimated value of security outlined above as at the date of the D&O Claim:

\$ 2,000.00 -

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_  
 Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_

Total Amount of D&O Claim \$ \_\_\_\_\_  
(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

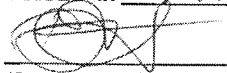
Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1


Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 28 day of August, 2009.

  
\_\_\_\_\_  
(Signature of Witness)

Dasi Skoklova  
\_\_\_\_\_  
(Please print name)


  
\_\_\_\_\_  
(Signature of individual completing this form)

Andrea McKinnon  
\_\_\_\_\_  
(Please print name)

# TAB N

**THIS IS EXHIBIT "N"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



*A Commissioner for Taking Affidavits*

75

RECEIVED  
AUG 25 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: Rene Wagner (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
5370 Jamison Crescent  
Burlington, Ontario L7L6Z1
- 3. Telephone Number of Creditor: 905 332 4110 1
- 4. Facsimile Number of Creditor: \_\_\_\_\_ Error! Bookmark not defined.
- 5. Attention (Contact Person): \_\_\_\_\_ Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: iwagner@Cogeco.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes  No  (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, Rene Wagner [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

the Creditor; or  
 hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ 4688.08 Cdn on a secured basis,  
I have valued my security at \$ 4688.08 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim \$ \_\_\_\_\_ Cdn on an unsecured basis

Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).

C. PARTICULARS OF D&O CLAIM:

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> Timothy Stubbs	\$ <u>4688.08</u>	\$ _____
<input checked="" type="checkbox"/> Patrick Lawlor	\$ <u>4688.08</u>	\$ _____
<input type="checkbox"/>	\$ _____	\$ _____
<input type="checkbox"/>	\$ _____	\$ _____

and/or

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

See attachment #1

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

*Wages.*

\_\_\_\_\_  
\_\_\_\_\_

Estimated value of security outlined above as at the date of the D&O Claim:

\_\_\_\_\_

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_  
(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_

Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_

Total Amount of D&O Claim \$ \_\_\_\_\_

(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Bollington this 24<sup>th</sup> day of August, 2009.

[Signature]  
(Signature of Witness)

YUKI MYKOZYK  
(Please print name)

[Signature]  
(Signature of individual completing this form)

Irene Wagner  
(Please print name)



ATTACHEMENT #1 – Particulars of Claim (Section C)

Vacation pay due upon termination (per attached vacation policy upon hiring in March 1985) is 31.5 days. Vacation policy clearly indicates vacation is earned after employment of 1 year. Therefore 4 weeks or 20 days was accrued in 2007 for 2008.

One week of “flex” credits (5 days) and vacation accrued from Jan. 1/08 to April 21/08 is 6.5 days – total  $20 + 5 + 6.5 = 31.5$  days. Only 11.5 days were paid – balance owing is 20 days. Please reference attached communication from Kevin O’Shea, Barrister & Solicitor and vacation policy.

Note: Employees hired prior to 1987 were “grandfathered” into maintaining the vacation policy as per their original hire date.

**Vacation Entitlement**

---

Effective January 1, 2007, Indalex Limited has adopted the following vacation allotment schedule for all employees in Canada:

Years of Employment	Number of Weeks of Vacation
Less 1 year	1 day per month of service
After 1 year	2 weeks
After 5 years (on your 5 year anniversary)	3 weeks
After 12 years (on your 12 year anniversary)	4 weeks

Indalex Limited will grandfather all individuals who have already met the service criteria under the old vacation schedule.

Each year an additional flex credit will be given to those employees who were hired prior to 1987. Employees hired in 1987 or before are given an additional service credit equal to one week's vacation. Employees hired in 1977 or before are given an additional service credit equal to two week's vacation. These credits are to be used to buy back your extra week (s) of vacation. If you do not use these credits to buy back your 5<sup>th</sup> and 6<sup>th</sup> week, you will only be allowed to take four weeks of vacation for 2007.

All vacations run a calendar year, that is from January to December, and must be used in that time period. Rolling vacation over into the next calendar year will not be permitted (except in extenuating circumstances as approved by the Human Resource Department). Your extra -week of vacation is awarded on your anniversary date.

**Holiday Entitlement**

---

Effective January 1, 2007, Indalex Limited will give employees eleven holidays. These holidays will be used to cover federal and provincial statutory holidays. Any unused days will be given as floater days.

CO FILE DEPT CLOCK VOIF NO 060  
NOX 000531 586 0000510129

# Earnings Statement



Period Ending: 12/26/2008  
Pay Date: 12/24/2008

**IRENE WAGNER**  
5370 JAMESON CRES  
BURLINGTON, ON L7L 6Z1



**INDALEX LIMITED**  
5675 KENNEDY ROAD  
MISSISSAUGA, ONTARIO L4Z2H9

Exemptions/Allowances:  
Federal: \$9600  
Provincial: \$8681

Social Insurance Number: 256-464-330


	rate	hours	this period	year to date
<b>Earnings</b>				
Salary Cont	29.3005	80.00	2,344.04	49,224.84
Reg			1,720.20	
Vacpay			2,749.09	
<b>Gross Pay</b>			<b>\$2,344.04</b>	<b>63,664.13</b>
<b>Deductions</b>				
Statutory				
Federal Tax			407.75	11,090.20
Provincial Tax			711.03	14,711.03
CPP			1049.30	20,491.30
Other				
Deposit			1,611.43	
Fe Rrsp			70.32	909.89
Fe Rbsp			70.32	909.89
Opt. Fam. Ad&D			10.77	20.02
Opt. Life			4.15	107.90
Rrsp Voluntary			7.50	4,833.33
<b>Net Pay</b>			<b>\$1,611.43</b>	

Other Benefits and Information	this period	total to date
Taxable Benefits	94.15	157.88
100% Er Dbsp	909.29	909.29
50% Er Dbsp	954.95	954.95

*Represents only 16 days*  
*25 1 week of accrued credits*  
*616 days earned in 2008*

|||||

DETACHEZ ICI  
1 YEAR FREE



Advice number: 00000510129

Account number: 003050

Bank transit No: 0010282

Amount: \$1,614.93

Deposited to the account of: **IRENE WAGNER**

Bank of Montreal / Banque de Montreal / First Canadian Place

TORONTO, ONTARIO

**NON-NEGOTIABLE**

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

March 23, 2009

*Sent Via Courier*

*Without Prejudice*

Mr. Dave McCallen – General Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, Ontario  
L4Z 2H9

Dear Mr. McCallen:

**RE: TERMINATION OF RICHARD ARENA, ANGELA SUIT, MICHAEL WHEELER,  
TERRY WHITE AND MICHAEL SILVER**

I understand Mr. Beaudreault is no longer employed with Indalex.


Prior to Mr. Beaudreault's departure from Indalex I had been involved with him in seeking resolution to a number of termination cases on behalf of clients I represent who were formally employed at Indalex.

I am presuming that you are now undertaking the continuation/finalization of these matters. If I am incorrect, I request that you direct me to the appropriate individual at Indalex with whom I should be corresponding.

In either event I believe it would be useful to advise of the current status of these matters, in furtherance of resolution.

**Irene Wagner**

I am enclosing my letters to Mr. Beaudreault dated October 6, 2008 and March 12, 2009 and Mr. Beaudreault's letter to me of October 24, 2008.

 Mr. Beaudreault has not provided any records supporting the position set out in his October 24, 2008 letter and I am forwarding a copy of an excerpt from the Indalex vacation policy which appears to support my client's position.

I would be grateful for a response to my March 12, 2009 letter.

Yours truly,

Kevin O'Shea  
KO:lr

cc: Irene Wagner - redacted

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

83  
KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

June 17, 2008

*Sent Via Facsimile*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9  
Facsimile: 1-866-462-6191

**COPY**

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

I am writing further to my letter to the Director of Human Resources dated May 14, 2008 with enclosure (enclosed).

I am also enclosing Indalex's original termination letter of February 25, 2008 which contained a settlement proposal and my return letter of April 16, 2008 confirming settlement on the basis of the February 25, 2008 letter with an amendment changing the 42 week notice period to a 52 week notice period. The remaining outstanding issue is the vacation pay referenced at the first paragraph of the February 25, 2008 letter.

X The purpose of this letter is to once again attempt closure of this matter by way of Indalex's payment of all outstanding vacation pay to my client and my client's execution of a Release.

I would appreciate an acknowledgement that this matter is being attended to at your earliest convenience given that confirmation of settlement occurred two months ago.

Yours truly,

  
Kevin O'Shea

KO:mt

encl.

cc: Irene Wagner

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

July 3, 2008

*Sent Via Facsimile*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9  
Facsimile: 1-866-462-6191

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

This will acknowledge your voicemail message left at my office June 25, 2008 concerning Mrs. Wagner.

I thought it would be helpful to provide my client's calculation of her outstanding vacation days prior to our discussion of this matter.

My client claims 31.5 outstanding vacation days are owed up to April 21, 2008.

This amount is based on:

- i. 4 weeks accrued in 2007 for 2008 *Unpaid*
  - ii. one additional week earned through "flex credits"
  - iii. 6.5 days accrued in 2008 up to April 21, 2008
- paid see attached pay stub.*

I look forward to speaking with you once you have had an opportunity to review my clients claim.

Yours truly,



Kevin O'Shea

KO:alt

cc: Irene Wagner

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

85  
KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

July 23, 2008

*Sent Via Facsimile*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9

**COPY**

Facsimile: 1-866-462-6191

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

Could I please have a response to my July 3, 2008, letter.

Yours truly,

  
Kevin O'Shea

KO:alt

cc: Irene Wagner

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

November 5, 2008

*Sent Via Facsimile Only*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9

**"Client Copy"**

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

My correspondence to you concerning this matter has gone unanswered.

This is to advise I am instructed to commence legal proceedings unless there is a meaningful response to my letters to you concerning my client's vacation pay entitlement.

Yours truly,

*"S. Allen per K. O'Shea"*

Kevin O'Shea

KO:sa

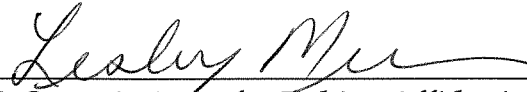
cc: Irene Wagner



# TAB O

**THIS IS EXHIBIT "O"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



*A Commissioner for Taking Affidavits*

88

RECEIVED

AUG 25 2009

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: Rene Wagner (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
5370 Jameson Crescent  
Burlington, Ontario L7L 6Z1
- 3. Telephone Number of Creditor: 905 332 4110 <sup>1</sup>
- 4. Facsimile Number of Creditor: \_\_\_\_\_ Error! Bookmark not defined.
- 5. Attention (Contact Person): \_\_\_\_\_ Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: iwagner@Cogeco.ca Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No (If yes please complete section D)

**B. PROOF OF D&O CLAIM:**

I, Rene Wagner [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

the Creditor; or  
 hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ \_\_\_\_\_ Cdn on a secured basis,  
I have valued my security at \$ \_\_\_\_\_ (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim \$ 4688.08 Cdn on an unsecured basis

*Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).*

**C. PARTICULARS OF D&O CLAIM:**

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input checked="" type="checkbox"/> Timothy Stubbs	\$ _____	\$ <u>4688.08</u>
<input checked="" type="checkbox"/> Patrick Lawlor	\$ _____	\$ <u>4688.08</u>
<input type="checkbox"/>	\$ _____	\$ _____
<input type="checkbox"/>	\$ _____	\$ _____

and/d

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

See attachment #1

\_\_\_\_\_

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

*Wages*

\_\_\_\_\_  
\_\_\_\_\_

Estimated value of security outlined above as at the date of the D&O Claim:

\_\_\_\_\_

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_ (the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_

Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_

Total Amount of D&O Claim \$ \_\_\_\_\_

(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Burlington this 28<sup>th</sup> day of August, 2009.

[Handwritten Signature]  
(Signature of Witness)

YURE CAKOLYK  
(Please print name)

[Handwritten Signature]  
(Signature of individual completing this form)

Rene Wagner  
(Please print name)

ATTACHEMENT #1 – Particulars of Claim (Section C)

Vacation pay due upon termination (per attached vacation policy upon hiring in March 1985) is 31.5 days. Vacation policy clearly indicates vacation is earned after employment of 1 year. Therefore 4 weeks or 20 days was accrued in 2007 for 2008.

One week of “flex” credits (5 days) and vacation accrued from Jan. 1/08 to April 21/08 is 6.5 days – total  $20 + 5 + 6.5 = 31.5$  days. Only 11.5 days were paid – balance owing is 20 days. Please reference attached communication from Kevin O’Shea, Barrister & Solicitor and vacation policy.

Note: Employees hired prior to 1987 were “grandfathered” into maintaining the vacation policy as per their original hire date.

**Vacation Entitlement**

---

Effective January 1, 2007, Indalex Limited has adopted the following vacation allotment schedule for all employees in Canada:

Years of Employment	Number of Weeks of Vacation
Less 1 year	1 day per month of service
After 1 year	2 weeks
After 5 years (on your 5 year anniversary)	3 weeks
After 12 years (on your 12 year anniversary)	4 weeks

Indalex Limited will grandfather all individuals who have already met the service criteria under the old vacation schedule.

Each year an additional flex credit will be given to those employees who were hired prior to 1987. Employees hired in 1987 or before are given an additional service credit equal to one week's vacation. Employees hired in 1977 or before are given an additional service credit equal to two week's vacation. These credits are to be used to buy back your extra week (s) of vacation. If you do not use these credits to buy back your 5<sup>th</sup> and 6<sup>th</sup> week, you will only be allowed to take four weeks of vacation for 2007.

All vacations run a calendar year; that is from January to December, and must be used in that time period. Rolling vacation over into the next calendar year will not be permitted (except in extenuating circumstances as approved by the Human Resource Department). Your extra -week of vacation is awarded on your anniversary date.

**Holiday Entitlement**

---

Effective January 1, 2007, Indalex Limited will give employees eleven holidays. These holidays will be used to cover federal and provincial statutory holidays. Any unused days will be given as floater days.



CO FILE DEPT CLOCK VOIR NO. 000  
 NOX 000531 536 000510129



INDALEX LIMITED  
 5675 KENNEDY ROAD  
 MISSISSAUGA, ONTARIO L4Z2H9

# Earnings Statement



Period Ending: 12/26/2008  
 Pay Date: 12/24/2008

IRENE WAGNER  
 5370 JAMESON CRES  
 BURLINGTON, ON L7L 6Z1

Exemptions/Allowances:  
 Federal: \$9600  
 Provincial: \$8681

Social Insurance Number: 256-464-330

	rate	hours	this period	year to date
Salary Cont	29.3005	80.00	2,344.04	49,224.84
Reg			1,720.20	
Vacpay			2,719.09	
<b>Gross Pay</b>			<b>\$2,344.04</b>	<b>63,664.13</b>
<b>Deductions</b>				
Statutory				
Federal Tax			40.75	1,090.20
Provincial Tax			71.19	1,090.20
CPP			2,049.30	
Other				
Deposit			6.93	
Ee Drsp			170.32	909.89
Ee Rrsp			170.32	909.89
Opt Fam Ad&D			0.77	20.02
Opt Life			4.15	107.90
Rrsp Voluntary			175.80	833.33
<b>Net Pay</b>			<b>\$1,614.93</b>	

Other Benefits and Information	this period	total to date
Taxable Benefits:		
Life Ins	5.93	154.18
100% Ee Drsp	909.89	
50% Ee Drsp	954.95	

20 represents only  
 11.5 days  
 25.16 days  
 6.16 days  
 2008

|||||

DETACHER ICI  
 TEAR HERE

Mississauga, Ontario, Canada

Deposited to the account of  
 Irene Wagner ad compte de  
 IRENE WAGNER

BANK OF MONTREAL  
 BANQUE DE MONTRÉAL  
 FIRST CANADIAN PLACE  
 TORONTO, ONTARIO

Advice number: 00000510129

Account number: 000102821

Amount: \$1,614.93

**NON-NEGOTIABLE**

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

95  
KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

March 23, 2009

*Sent Via Courier*

*Without Prejudice*

Mr. Dave McCallen – General Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, Ontario  
L4Z 2H9

Dear Mr. McCallen:

**RE: TERMINATION OF RICHARD ARENA, ANGELA SUIT, MICHAEL WHEELER,  
TERRY WHITE AND MICHAEL SILVER**

I understand Mr. Beaudreault is no longer employed with Indalex.

Prior to Mr. Beaudreault's departure from Indalex I had been involved with him in seeking resolution to a number of termination cases on behalf of clients I represent who were formally employed at Indalex.

I am presuming that you are now undertaking the continuation/finalization of these matters. If I am incorrect, I request that you direct me to the appropriate individual at Indalex with whom I should be corresponding.

In either event I believe it would be useful to advise of the current status of these matters, in furtherance of resolution.

**Irene Wagner**

I am enclosing my letters to Mr. Beaudreault dated October 6, 2008 and March 12, 2009 and Mr. Beaudreault's letter to me of October 24, 2008.

\* Mr. Beaudreault has not provided any records supporting the position set out in his October 24, 2008 letter and I am forwarding a copy of an except from the Indalex vacation policy which appears to support my client's position.

I would be grateful for a response to my March 12, 2009 letter.

Yours truly,

Kevin O'Shea  
KO:lr

cc: Irene Wagner - redacted

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

June 17, 2008

*Sent Via Facsimile*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9  
Facsimile: 1-866-462-6191

**COPY**

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

I am writing further to my letter to the Director of Human Resources dated May 14, 2008 with enclosure (enclosed).

I am also enclosing Indalex's original termination letter of February 25, 2008 which contained a settlement proposal and my return letter of April 16, 2008 confirming settlement on the basis of the February 25, 2008 letter with an amendment changing the 42 week notice period to a 52 week notice period. The remaining outstanding issue is the vacation pay referenced at the first paragraph of the February 25, 2008 letter.

*X* The purpose of this letter is to once again attempt closure of this matter by way of Indalex's payment of all outstanding vacation pay to my client and my client's execution of a Release...

I would appreciate an acknowledgement that this matter is being attended to at your earliest convenience given that confirmation of settlement occurred two months ago.

Yours truly,



Kevin O'Shea

KO:mt

encl.

cc: Irene Wagner

97

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALÉDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

July 3, 2008

*Sent Via Facsimile*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9  
Facsimile: 1-866-462-6191

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

This will acknowledge your voicemail message left at my office June 25, 2008 concerning Mrs. Wagner.

I thought it would be helpful to provide my client's calculation of her outstanding vacation days prior to our discussion of this matter.

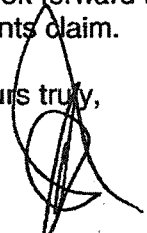
My client claims 31.5 outstanding vacation days are owed up to April 21, 2008.

This amount is based on:

- i. 4 weeks accrued in 2007 for 2008 *un paid.*
  - ii. one additional week earned through "flex credits" *Paid*
  - iii. 6.5 days accrued in 2008 up to April 21, 2008 *Paid*
- > see attached pay stub.*

I look forward to speaking with you once you have had an opportunity to review my clients claim.

Yours truly,



Kevin O'Shea

KO:alt

cc: Irene Wagner

98

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

July 23, 2008

*Sent Via Facsimile*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9

**COPY**

Facsimile: 1-866-462-6191

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

Could I please have a response to my July 3, 2008, letter.

Yours truly,

  
Kevin O'Shea

KO:alt

cc: Irene Wagner

99

**KEVIN O'SHEA, LL.B.**  
Barrister & Solicitor

KALEDAN PLACE (1878)  
6108 MAIN STREET  
STOUFFVILLE, ONTARIO  
L4A 1B5

*Labour & Employment Law*

TELEPHONE: (905) 642-8793  
FACSIMILE: (905) 642-2366

November 5, 2008

*Sent Via Facsimile Only*

Mr. Michael Boudreault  
Human Resources Manager  
Indalex Limited  
5675 Kennedy Road  
Mississauga, ON  
L4Z 2H9

**"Client Copy"**

Dear Mr. Boudreault:

**RE: TERMINATION OF IRENE WAGNER**

My correspondence to you concerning this matter has gone unanswered.

This is to advise I am instructed to commence legal proceedings unless there is a meaningful response to my letters to you concerning my client's vacation pay entitlement.

Yours truly,

*"S. Allen per K. O'Shea"*

Kevin O'Shea

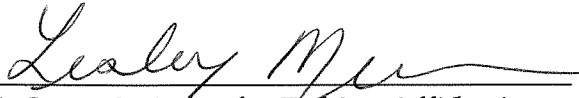
KO:sa

cc: Irene Wagner

# TAB P

**THIS IS EXHIBIT "P"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*



**A Commissioner for Taking Affidavits**



Founded in 1852  
by Sidney Davy Miller

# MILLER CANFIELD

ANGELA D'ALESSANDRO  
TEL (519) 561-7447  
FAX (519) 977-1565  
E-MAIL [dalessandro@millercanfield.com](mailto:dalessandro@millercanfield.com)

Miller, Canfield, Paddock and Stone, LLP  
443 Ouellette Avenue, Suite 300, P.O. Box 1390  
Windsor, Ontario, Canada N9A 6R4  
TEL (519) 977-1555/(313) 962-1990  
[www.millercanfield.com](http://www.millercanfield.com)

MICHIGAN: Ann Arbor  
Detroit • Grand Rapids  
Kalamazoo • Lansing  
Saginaw • Troy

---

FLORIDA: Naples  
ILLINOIS: Chicago  
NEW YORK: New York  
OHIO: Cincinnati

---

CANADA: Toronto • Windsor  
CHINA: Shanghai  
MEXICO: Monterrey  
POLAND: Gdynia  
Warsaw • Wrocław

August 27, 2009

**By Priority Courier**

**FTI Consulting Canada ULC,**  
TD Canada Trust Tower  
161 Bay Street, 27th Floor  
Toronto, Ontario  
M5J 2S1

**Attention: Ms. Rachel Gillespie**

**Re: Indalex Limited et al**  
**Our File No. 132117-00002**

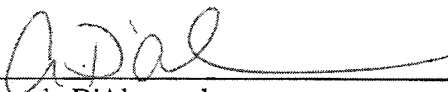
Dear Madame:

Please find enclosed the Proof of D & O Claim with respect to Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc., which is being filed on behalf of the The Official Committee of Unsecured Creditors.

Should you have any questions, please feel free to contact the writer.

Very truly yours,

Miller, Canfield, Paddock and Stone, LLP

By:   
Angela D'Alessandro

AD/saf

Enclosures

RECEIVED

AUG 28 2009

## Schedule "5"

## PROOF OF D&amp;O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

- A. PARTICULARS OF D&O CREDITOR      The Official Committee of Unsecured Creditors  
of Indalex Holdings Finance, Inc., *et al.* (the  
"Official Committee of Unsecured Creditors") (the
1. Full Legal Name of D&O Creditor: "Official Committee of Unsecured Creditors" (the "Creditor").  
(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)
  2. Full Mailing Address of the Creditor:  
The Official Committee of Unsecured Creditors  
c/o McGuire Woods LLP, EQT Plaza, 625 Liberty Avenue, 23<sup>rd</sup> Floor,  
Pittsburgh, PA, U.S.A. 15222
  3. Telephone Number of Creditor: (412) 667-6000
  4. Facsimile Number of Creditor: (412) 667-6050
  5. Attention (Contact Person): Michael J. Roeschenthaler and William C. Price

IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: mroeschenthaler@mcguirewoods.com and wprice@mcguirewoods.com

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

**B. PROOF OF D&O CLAIM:**

I, Michael J. Roeschenthaler [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

\_\_\_ the Creditor; or  
X hold the following position of U.S. Counsel of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

Secured D&O Claim \$ \_\_\_\_\_ Cdn on a secured basis,  
I have valued my security at \$ \_\_\_\_\_ (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

Unsecured D&O Claim \$61,225,600 Cdn on an unsecured basis\*\*\*

**\*\*\* Please note that the amount is an estimated amount of liability.**  
*Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).*

**C. PARTICULARS OF D&O CLAIM:**

Name of the Director and the amount for each Director which owes the amount claimed:

All Directors of:	Secured	Unsecured
Indalex Limited	\$ _____	\$ <u>61,225,600</u> Cdn
Indalex Holdings (B.C.) Ltd.	\$ _____	\$ <u>61,225,600</u> Cdn
6326765 Canada Inc.	\$ _____	\$ <u>61,225,600</u> Cdn
Novar Inc.	\$ _____	\$ <u>61,225,600</u> Cdn

Description of transaction, agreement or event giving rise or relating to the D&O

Please see Appendix "A".

---

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:  
 Please see Appendix "B" (Directors, Officers and Private Company Liability Insurance Policy).

---

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:

---

Estimated value of security outlined above as at the date of the D&O Claim:

---

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

---

(the "Assignee(s)")

Amount of Total D&O Claim Assigned	\$ _____
Amount of Total D&O Claim Not Assigned	\$ _____
Total Amount of D&O Claim (should equal "Total D&O Claim" as entered on Section B)	\$ _____

2. Full Mailing Address of Assignee(s):

---



---



---

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
 Indalex Holdings (B.C.) Ltd. and/or  
 6326765 Canada Inc. and/or  
 Novar Inc.  
 c/o FTI Consulting Canada ULC,  
 TD Canada Trust Tower  
 161 Bay Street, 27<sup>th</sup> Floor  
 Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
 Facsimile: (416)-572-4068  
 E-mail: [rachel.gillespie@fticonsulting.com](mailto:rachel.gillespie@fticonsulting.com)

DATED at Pittsburgh, PA, U.S.A. this 27<sup>th</sup> day of August, 2009.

Lela Lescalette  
(Signature of Witness)

Lela Lescalette  
(Please print name)

Michael J. Roestenthaler / wif  
(Signature of individual completing this form)

Michael J. Roestenthaler / wif  
(Please print name)

APPENDIX "A"

The Official Committee of Unsecured Creditors of Indalex Holdings Finance, Inc., *et al.*, (the "Committee") asserts an unsecured claim against the Officers and Directors of Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the "Debtors") each in the estimated sum of \$61,225,600.00 Cdn on the basis of the insurance coverage provided to the Debtors in the AIG Executive Liability, Directors, Officers and Private Company Liability Insurance Policy (Policy Number: 01-589-00-75) for the period from February 23, 2009 to February 23, 2010 (the "Policy").

The Policy provides for Director and Officer Coverage for Indalex Holdings Finance, Inc. and all subsidiary coverage of any past, present or future Subsidiary to Indalex Holdings Finance, Inc. The Debtors are subsidiaries of Indalex Holdings Finance, Inc. and as such as entitled to subsidiary coverage pursuant to the Policy.

The Policy provides insurance for, *inter alia*, for all Wrongful Acts committed or allegedly committed by the Officers and/or Directors of the Debtors. The Committee submits that several theories of liability exist with respect to the Officers and Directors of the Debtors including, but not necessarily limited to, preferential and fraudulent transfers made while the Debtors were insolvent, breach of fiduciary duty and mismanagement.

Additionally, the Policy is a "claims made" insurance policy and, to the extent other claims are made against the Policy, the Committee submits that the Policy is an asset of the Debtors' affiliated United States entities (the "U.S. Debtors") that are currently submitted to the jurisdiction of the United States Bankruptcy Court for the District of Delaware at the cases styled "*In re Indalex Holdings Finance, Inc., et al.*, Jointly Administered at 09-10982-PJW" (the "U.S. Bankruptcy Proceedings"). The Policy, and any proceeds therefrom, constitute property of the U.S. Debtors' bankruptcy estates pursuant to 11 U.S.C. § 541. As such, the Committee reserves any and all rights to object to any party seeking to collect proceeds from the Policy without seeking the requisite authority in the U.S. Bankruptcy Proceedings.

Full particulars may be provided upon request of the Monitor.

**AIG** **AIG EXECUTIVE LIABILITY** <sup>SM</sup>

Insurance provided by the following member of American International Group, Inc.

**Illinois National Insurance Company**

A capital stock company

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY INSURANCE** ✓  
**POLICY**

**Including Employment Practices and Securities Liability**

*PrivateEdge*<sup>SM</sup>

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE: THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND. HOWEVER THE INSUREDS MAY UNDER CERTAIN CONDITIONS TENDER THE DEFENSE OF A CLAIM. IN ALL EVENTS, THE INSURER MUST ADVANCE DEFENSE COSTS PAYMENTS PURSUANT TO THE TERMS HEREIN PRIOR TO THE FINAL DISPOSITION OF A CLAIM.

POLICY NUMBER: *01-589-00-75* ✓

REPLACEMENT OF POLICY NUMBER: *N/A*

**DECLARATIONS**

ITEM 1. NAMED ENTITY: *INDALEX HOLDINGS FINANCE, INC.* ✓

MAILING ADDRESS: *75 TRISTATE INTL STE 450  
LINCOLNSHIRE, IL 60069-4423*

STATE OF INCORPORATION OR STATE OF FORMATION OF THE NAMED ENTITY:  
*Delaware*

ITEM 2. SUBSIDIARY COVERAGE: any past, present or future Subsidiary of the Named Entity

ITEM 3. POLICY PERIOD: From: *February 23, 2009* To: *February 23, 2010* ✓  
(12:01 A.M. standard time at the address stated in Item 1.)

ITEM 4. LIMIT OF LIABILITY: *\$10,000,000* ✓  
aggregate for all Loss combined (Including Defense Costs)

1265347

ITEM 5. RETENTION:

Judgments, Settlements and  
Defense Costs (non-Indemnifiable Loss) None

Employment Practices Claims  
Judgments, Settlements and Defense Costs  
(Company and Indemnifiable Loss) \$250,000 ✓  
for Loss arising from Claims  
alleging the same Wrongful Act  
or Related Wrongful Acts  
(waivable under Clause 6 in  
certain circumstances)

Security Claims (other than private placements)  
Judgments, Settlements and Defense Costs  
(Company and Indemnifiable Loss) \$250,000 ✓  
for Loss arising from Claims  
alleging the same Wrongful Act  
or Related Wrongful Acts  
(waivable under Clause 6 in  
certain circumstances)

All Other Claims (including private placements)  
Judgments, Settlements and Defense Costs  
(Company and Indemnifiable Loss) \$250,000 ✓  
for Loss arising from Claims  
alleging the same Wrongful Act  
or Related Wrongful Acts  
(waivable under Clause 6 in  
certain circumstances)

ITEM 6. CONTINUITY DATES:

- A. Coverages A and B(ii): February 2, 2006 ✓
- B. Coverage B(i): February 2, 2006 ✓
- C. Outside Entity Coverage: Per Outside Entity,  
see endorsement # 12

ITEM 7. PREMIUM: \$49,175

*Premium for Certified Acts of Terrorism Coverage under Terrorism Risk Insurance Act 2002: \$486 included in policy premium. Any coverage provided for losses caused by an act of terrorism as defined by TRIA (TRIA Losses) may be partially reimbursed by the United States under a formula established by TRIA as follows: 85% of TRIA Losses in excess of the insurer deductible mandated by TRIA, the deductible to be based on a percentage of the insurer's direct earned premiums for the year preceding the act of terrorism. A copy of the TRIA disclosure sent with the original quote is attached hereto.*

1265347



ADDITIONAL PREMIUM FOR PUNITIVE, EXEMPLARY AND  
MULTIPLIED DAMAGES: *\$4,869* (Included in above )  
(No punitive damages coverage provided: )

ITEM 8. NAME AND ADDRESS OF INSURER (hereinafter "Insurer"):  
(This policy is issued only by the Insurance company indicated below.)

*Illinois National Insurance Company*

*175 Water Street*

*New York, NY 10038*

1285347

IN WITNESS WHEREOF, the Insurer has caused this policy to be signed on the Declarations page by its President, a Secretary and a duly authorized representative of the Insurer.

*Elizabeth M. Tuck*

SECRETARY

*John J. Dylk*

PRESIDENT

*John J. Dylk*

AUTHORIZED REPRESENTATIVE

COUNTERSIGNATURE

DATE

COUNTERSIGNED AT

MARSH USA INC.  
1560 SAWGRASS CORPORATE PKWY  
STE 300  
SUNRISE, FL 33323-4146

1265347

111

**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM INSURANCE COVERAGE  
(APPLICABLE TO CERTIFIED AND NON-CERTIFIED ACTS)**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury—in concurrence with the Secretary of State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

**COPY OF DISCLOSURE SENT WITH ORIGINAL QUOTE**

Insured Name: *INDALEX HOLDINGS FINANCE, INC.*

Policy Number: *01-589-00-75*

Policy Period Effective Date From: *February 23, 2009* To: *February 23, 2010*

112

**AIG** **AIG EXECUTIVE LIABILITY** <sup>SM</sup>

Insurance provided by the following member of American International Group, Inc.

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY INSURANCE**

**POLICY**

Including Employment Practices and Securities Liability

**PrivateEdge**<sup>®</sup>

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, the insurance company designated in Item 8 of the Declarations, herein called the Insurer, agrees as follows:

**1. INSURING AGREEMENTS**

**COVERAGE A: INDIVIDUAL INSURED INSURANCE**

This policy shall pay the Loss of each and every Director, Officer or Employee of the Company arising from a Claim first made against such Insureds during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in their respective capacities as Directors, Officers or Employees of the Company except when and to the extent that the Company has indemnified such Insureds. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

**COVERAGE B: PRIVATE COMPANY INSURANCE**

This policy shall pay the Loss of the Company arising from a:

- (i) Claim first made against the Company, or
- (ii) Claim first made against an Individual Insured,

during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act, but, in the case of (ii) above, only when and to the extent that the Company has indemnified the Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Company duly effective under such law which determines and defines such rights of indemnity. The Insurer shall, in accordance with and subject to Clause 8, advance Defense Costs of such Claim prior to its final disposition.

**DEFENSE PROVISIONS**

The Insurer does not assume any duty to defend, provided, however, the Named Entity may at its sole option tender to the Insurer the defense of a Claim for which coverage is provided by this policy to the Insurer in accordance with Clause 8 of the policy. Regardless of whether the defense is so tendered, the Insurer shall advance Defense Costs (excess of the applicable retention amount) of such Claim prior to its final disposition. Selection of counsel to defend a "Designated Claim" shall be made in accordance with Clause 9 of the policy.

**2. DEFINITIONS**

- (a) "Affiliate" means: (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, another person or entity; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.

- (b) "Claim" means:
- (1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
  - (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
    - (i) service of a complaint or similar pleading; or
    - (ii) return of an indictment (in the case of a criminal proceeding); or
    - (iii) receipt or filing of a notice of charges.
  - (3) an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") (or similar state, local or foreign agency) which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the Insured. However, in no event shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

The term "Claim" shall include an Employment Practices Claim and a Securities Claim.

- (c) "Company" means the Named Entity and any Subsidiary thereof.
- (d) "Continuity Date" means the date set forth in:
- (1) Item 6A of the Declarations with respect to Coverages A and B(ii); or
  - (2) Item 6B of the Declarations with respect to Coverage B(i); or
  - (3) Item 6C of the Declarations with respect to a Claim made against an Individual Insured(s) arising out of such Insured's service as a director, officer, trustee or governor of an Outside Entity.
- (e) "Defense Costs" means reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a Claim against the Insureds, but excluding salaries of officers or Employees of the Company.
- (f) "Employee(s)" means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee in his or her capacity as such. An individual who is leased to the Company shall also be an Employee, but only if the Company provides indemnification to such leased individual in the same manner as is provided to the Company's employees. Any other individual who is contracted to perform work for the Company, or who is an independent contractor for the Company shall also be an Employee, but only if the Company provides indemnification to such individual in the same manner as that provided to the Company's employees, and such individual is scheduled by written endorsement attached hereto and the Company pays any additional premium required by the Insurer relating to such individual.
- (g) "Employment Practices Claim" means a Claim alleging an Employment Practices Violation.

(h) "Employment Practices Violation(s)" means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including sexual harassment whether "quid pro quo"; hostile work environment or otherwise);
- (3) discrimination, (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
- (4) Retaliation (including lockouts);
- (5) employment-related misrepresentation(s) to an Employee or applicant for employment with the Company;
- (6) employment-related libel, slander, humiliation, defamation, invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (9) wrongful discipline;
- (10) failure to grant tenure;
- (11) failure to provide or enforce adequate or consistent corporate policies and procedure relating to any Employment Practices Violation; or
- (12) violation of an individual's civil rights relating to any of the above,

but only if the Employment Practices Violation relates to an Employee(s), or applicant for employment with the Company or an Outside Entity, whether direct, indirect, intentional or unintentional.

With respect to any customer or client of the Company, whether individually or as a class or group, Employment Practices Violation shall mean only any actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

(i) "Individual Insured(s)" means:

- (1) any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the Company, but only in their capacities as such. Coverage will automatically apply to all new directors, officers, management committee members or members of the Board of Managers of the Company after the inception date of this policy;
- (2) any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the Company serving in the capacity as director, officer, trustee or governor of an Outside Entity, but only if such service is at the specific written request or direction of the Company;
- (3) in the event the Company operates outside the United States, then the terms director, officer, management committee member or member of the Board of Managers shall also mean those titles, positions or capacities in such foreign Company which are equivalent to such positions in an organization incorporated or formed within the United States; and
- (4) any Employee(s) of the Company.

(j) "Insured(s)" means:

- (1) an individual insured; and
- (2) the Company.

(k) "Loss" means damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest, and Defense Costs; however, Loss shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds; (4) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (5) any liability or costs incurred by any Insured to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an Employment Practices Claim; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

If an additional premium is stated in Item 7 of the Declarations page, then Loss shall specifically include, (subject to the policy's other terms, conditions and exclusions, including but not limited to exclusions relating to personal profit or advantage, deliberate fraud, criminal acts or willful violation of any statute, rule or regulation) punitive, exemplary and multiple damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). It is further understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages. If an additional premium is not stated in Item 7 of the Declarations then Loss shall not include punitive, exemplary damages or the multiplied portion of multiple damages.

(l) "Named Entity" means the organization stated in Item 1 of the Declarations whether a corporation, association, limited liability company or other type of business organization.

(m) "No Liability" means: (1) a final judgment of no liability obtained prior to trial, in favor of all Insureds, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or (2) a final judgment of no liability obtained after trial, in favor of all Insureds, after the exhaustion of all appeals. In no event shall the term "No Liability" apply to a Claim made against an Insured for which a settlement has occurred.

(n) "Outside Entity" means:

- (1) a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended); or
- (2) any other corporation, partnership, joint venture or other organization listed by endorsement to this policy.

(o) "Policy Period" means the period of time from the Inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.

(p) "Related Wrongful Acts" shall mean Wrongful Acts which are the same, related or continuous, or Wrongful Acts which arise from a common nucleus of facts. Claims can allege Related Wrongful Acts regardless of whether such Claims involve the same or different claimants, Insureds or legal causes of action.

(q) "Retaliation" means a Wrongful Act of an Insured relating to or alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an Employee to a superior or to any governmental agency of any act by an Insured which act is alleged to be a violation of any federal, state, local or foreign

law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an Employee of any right that such Employee has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) Employee strikes.

(r) "Securities Claim" means a Claim (including a civil lawsuit or criminal proceeding brought by the Securities & Exchange Commission) made against an Insured anywhere in the world alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

- (1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the Company, or
- (2) brought by a securities holder of the Company, whether directly, by class action, or derivatively on the behalf of the Company, or otherwise, alleging any Wrongful Act of an Insured.

(s) "Subsidiary" means:

- (1) any for-profit organization which, on or before the inception of the Policy Period, is more than 50% owned by the Named Entity, either directly, or indirectly through one or more of its Subsidiaries;
- (2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than 25% of the total consolidated assets of the Company as of the inception date of this policy which becomes a Subsidiary during the Policy Period. The Named Entity shall provide the Insurer with full particulars of the new Subsidiary before the end of the Policy Period; or
- (3) an organization which becomes a Subsidiary during the Policy Period (other than a for-profit organization described in paragraph (2) above), but only upon the condition that within 90 days of its becoming a Subsidiary, the Named Entity shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to such new Subsidiary.

An organization becomes a Subsidiary when the Named Entity owns more than a 50% ownership interest in such Subsidiary, either directly, or indirectly through one or more of its Subsidiaries. An organization ceases to be a Subsidiary when the Named Entity ceases to own more than a 50% ownership interest in such Subsidiary, either directly, or indirectly through one or more of its Subsidiaries.

In all events, coverage as is afforded under this policy with respect to a Claim made against Individual Insureds or a Claim made against any Subsidiary, shall only apply to Claims for Wrongful Acts committed or allegedly committed after the effective time that such Subsidiary became a Subsidiary and prior to the time that such Subsidiary ceased to be a Subsidiary.



(t) "Wrongful Act" means:

- (1) with respect to Individual Insureds, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Insureds in their respective capacities as such, or any matter claimed against such Insured solely by reason of their status as directors, officers or Employees of the Company;
- (2) with respect to the Company, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Company; and
- (3) with respect to service on an Outside Entity, any matter claimed against an Individual Insured as defined in definition (l)(2) arising out of his or her serving as a director, officer, trustee or governor of an Outside Entity in such capacity, but only if such service is at the specific written request or direction of the Company.

With respect to an Employment Practices Claim, the term "Wrongful Act" shall include any Employment Practices Violation.

3. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of deceased Individual Insureds, and the legal representatives of Individual Insureds, in the event of incompetency, insolvency or bankruptcy, who were Individual Insureds at the time the Wrongful Act upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Loss arising from all Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Individual Insured for all Claims arising solely out of his or her status as the spouse of an Individual Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Individual Insured and the spouse, or property transferred from the Individual Insured to the spouse; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Individual Insured, subject to the policy's terms, conditions and exclusions.

4. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured:

- (a) arising out of, based upon or attributable to the gaining in fact of any profit or advantage to which an Insured was not legally entitled;
- (b) arising out of, based upon or attributable to: (1) profits in fact made from the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law; or (2) payments to an Insured of any remuneration without the previous approval of the stockholders of the Company, which payment without such previous approval shall be held to have been illegal;
- (c) arising out of, based upon or attributable to the committing in fact of any criminal, fraudulent or dishonest act, or any wilful violation of any statute, rule or law;

[The Wrongful Act of an Insured shall not be imputed to any other Insured for the purpose of determining the applicability of the foregoing exclusions 4(a) through 4(c).]

- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or Related Wrongful Act alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (e) alleging, arising out of, based upon or attributable to as of the Continuity Date, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, or alleging any Wrongful Act which is the same or Related Wrongful Act to that alleged in such pending or prior litigation or administrative, or regulatory, proceeding or investigation;
- (f) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Insured serving in any capacity, other than a director, officer, management committee member, member of the Board of Managers or Employee of the Company, or as a director, officer, trustee or governor of an Outside Entity;
- (g) for any Wrongful Act arising out of an Individual Insured serving in a capacity as a director, officer, trustee or governor of an Outside Entity if such Claim is brought by the Outside Entity or a director, officer, trustee or governor thereof;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or any other Insured under any express contract or agreement; provided, however, that with respect to Employment Practice Claims, this exclusion shall not apply to the extent any liability does not arise under such express employment contract or agreement;
- (i) which is brought by any Insured or by the Company, or which is brought by any security holder of the Company, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured; provided, however, this exclusion shall not apply to:
  - (1) any Claim brought by an Individual Insured where such Claim is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a Claim which is not otherwise excluded by the terms of this policy; or
  - (2) an Employment Practices Claim brought by an Employee of the Company other than an Employee who is or was a director, member of the Board of Managers, or management committee member of the Named Entity;
- (j) alleging, arising out of, based upon or attributable to any public offering of securities by the Company, an Outside Entity or an Affiliate or alleging a purchase or sale of such securities subsequent to such public offering;
 

provided, however, that this exclusion will not apply to:

  - (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the Named Entity shall give the Insurer written notice of any public offering exempted pursuant to section 3(b), together with full particulars and as soon as practicable, but not later than 30 days after the effective date of the public offering;
  - (2) to any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within 30 days prior to the effective time of such public offering: (i) the Named Entity shall give the

Insurer written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the Named Entity accepts such terms, conditions and additional premium required by the Insurer for such coverage. Such coverage is also subject to the Named Entity paying when due any such additional premium. In the event the Company gives written notice with full particulars and underwriting information pursuant to (i) above, then the Insurer must offer a quote for coverage under this paragraph;

(k) alleging, arising out of, based upon or attributable to the purchase by the Company of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an Affiliate or Subsidiary of the Company; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming an Affiliate or Subsidiary, the Named Entity gives written notice of the transaction to the Insurer together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this policy required by the Insurer relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;

(l) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to Securities Claims;

(m) for emotional distress, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, this exclusion shall not apply to any Securities Claim or Employment Practices Claim;

(n) for any actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or for any direction or request to test, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants; provided, however, this exclusion shall not apply to any Claim brought by a securities holder of the Company in its capacity as such or to any Employment Practices Claim;

(o) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar provisions of any federal, state, local or foreign statutory law or common law; provided, however, that this exclusion shall not apply to Loss arising from a Claim for Retaliation;

(p) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to Loss arising from a Claim for Retaliation;

(q) with respect to Coverage B(l), only:

(1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;

(2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;

- (3) for the rendering or failure to render any service to a customer or client of the insured; provided, however, that this exclusion shall not apply to any:
  - (i) Claim solely alleging Employment Practices Violations;
  - (ii) Securities Claim; or
  - (iii) Claim for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this policy by written endorsement attached hereto; or
- (4) seeking fines or penalties or non-monetary relief against the Company; provided, however, that this exclusion shall not apply to any Securities Claim or Employment Practices Claim.

**5. LIMIT OF LIABILITY and REINSTATED LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)**

Defense Costs are not payable by the insurer in addition to the limit of liability. Defense Costs are part of Loss and as such are subject to the applicable Limit of Liability for Loss.

**A. General Terms**

The Limit of Liability stated in Item 4 of the Declarations is the limit of the insurer's liability for all Loss, under Coverage A and Coverage B combined, arising out of all Claims first made against the insureds during the Policy Period and the Discovery Period (if applicable); however, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the Limit of Liability for the Policy Period, or the Reinstated Limit as described below (if elected). Further, a Claim which is made subsequent to the Policy Period or Discovery Period (if applicable) which pursuant to Clause 7(b) or 7(c) is considered made during the Policy Period or Discovery Period shall also be subject to the one applicable aggregate Limit of Liability stated in Item 4 of the Declarations, or subject to the one aggregate Reinstated Limit if such Reinstated Limit is applicable to such Claim.

**B. Reinstated Limit of Liability**

In the event of a Claim under this policy, the Named Entity shall have the right to purchase a Reinstated Limit equal to the Limit of Liability stated in Item 4 of the Declarations. The Reinstated Limit shall be subject to the following conditions:

- 1. The right to elect the Reinstated Limit commences on the date a Claim is reported to the insurer and expires on the last day of the Policy Period; provided, that in all events, only one reinstatement is permitted under this policy. The effective date of the reinstatement shall be the date on which the insurer acknowledges receipt of the written notice of the insured's election to exercise the reinstatement.
- 2. If the Policy Period of this policy is more than one year, then the additional premium to elect the Reinstated Limit at any time after one year from the inception date of this policy shall be fixed at 150% of the premium set forth in Item 7 of the Declarations. Regardless of the length of the Policy Period of this policy, the additional premium to elect the Reinstated Limit within one year from the inception date of this policy shall be an amount determined by the insurer at the time of the election of the Reinstated Limit unless otherwise indicated by written endorsement to this policy.
- 3. The Reinstated Limit shall only apply to Claims made against an insured after the effective date of the reinstatement and prior to the end of the Policy

Period or the Discovery Period, if applicable, ("Reinstatement Claims"); provided, however, that the Reinstated Limit shall not apply to Claims which allege a Related Wrongful Act to Claim(s) reported to the Insurer prior to the effective date of the reinstatement.

4. The Reinstated Limit shall be the maximum liability of the Insurer for all Reinstatement Claims. The Limit of Liability described in Clause 5A as applicable to Claims made against the Insureds prior to the effective date of the reinstatement shall not apply to any Reinstatement Claim.

5. Upon exercise of the Reinstated Limit, the entire premium set forth in Item 7 of the Declarations shall be deemed fully earned; the Insureds shall not be entitled to any return premium as a result of the exercise of the Reinstated Limit nor shall any of the premium paid for the policy be credited toward the additional premium required to exercise the Reinstated Limit.

6. In no event shall the right to a reinstatement apply if prior to the effective date of the reinstatement, this policy has been cancelled, is otherwise not in effect, or the Discovery Period has been elected.

7. Other than as stated above, coverage for Reinstatement Claims shall be subject to the same terms, conditions and exclusions of the policy applicable to other Claims under this policy. The Insurer cannot otherwise modify any terms, conditions or exclusions of this policy as a condition of providing the reinstatement.

**6. RETENTION CLAUSE**

The Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the Retention amount stated in Item 5 of the Declarations, such Retention amount to be borne by the Company or the Insureds and shall remain uninsured, with regard to all Loss under: (1) Coverage A or B(ii) for which the Company has indemnified or is permitted or required to indemnify the Individual Insured(s) ("Indemnifiable Loss"), or (2) Coverage B(i). A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or Related Wrongful Act.

Subject to the above paragraph, the Retention amounts stated in Item 5 of the Declarations shall apply. In the event a Claim triggers more than one amount stated in Item 5 of the Declarations, only the highest such amount shall apply, which amount shall apply to all Loss under such Claim.

The Retention amount shall be reduced in the event that an Insured consents to the first Settlement Opportunity, as defined in Clause 8, by the percentage described in Clause 8, subject to the conditions described in Clause 8.

No Retention shall apply to a Claim which is in the form of a civil action for monetary relief and the Insurer shall thereupon reimburse the Defense Costs paid by the Insured, in the event of:

- (1) a determination of No Liability of all Insureds; or
- (2) a dismissal or a stipulation to dismiss the civil litigation Claim without prejudice and without the payment of any consideration by any Insured;

provided, however, that in the case of (2) above, such reimbursement shall occur ninety (90) days after the date of dismissal or stipulation as long as the Claim is not re-brought (or any other Claim which is subject to the same single retention by virtue of Clause 6 is not brought) within that time, and further subject to an undertaking by the Company in a form acceptable to the Insurer that such reimbursement shall be paid back by the Company to the Insurer in the event the Claim (or any other Claim which is subject to the same single retention by virtue of Clause 6) is brought after such 90 day period and before the expiration of the statute of limitations for such Claim.

**7. NOTICE/CLAIM REPORTING PROVISIONS**

Notice hereunder shall be given in writing to the Insurer named in Item 8 of the Declarations at the address indicated in Item 8 of the Declarations.

If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. A Claim shall be considered to have been first made against an Insured when written notice of such Claim is received by any Insured, by the Company on the behalf of any Insured or by the Insurer, whichever comes first.

(a) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of any Claim made against an Insured as soon as practicable and either:

- (1) anytime during the Policy Period or during the Discovery Period (if applicable); or
- (2) within 30 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim is reported no later than 30 days after the date such Claim was first made against an Insured.

(b) If written notice of a Claim has been given to the Insurer pursuant to Clause 7(a) above, then any Claim which is subsequently made against the Insureds and reported to the Insurer alleging a Related Wrongful Act to the Claim for which such notice has been given shall be considered made at the time such notice was given.

(c) If during the Policy Period or during the Discovery Period (if applicable) the Company or the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against the Insureds and shall give written notice to the Insurer of the circumstances and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then any Claim which is subsequently made against the Insureds and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any Related Wrongful Act to such circumstances, shall be considered made at the time such notice of such circumstances was given.

**8. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**

The Insurer does not assume any duty to defend. The Insureds shall defend and contest any Claim made against them.

Notwithstanding the foregoing, the Insureds shall have the right to tender the defense of the Claim to the Insurer, which right shall be exercised in writing by the Named Entity on behalf of all Insureds to the Insurer pursuant to the notice provisions of Clause 7 of this policy. This right shall terminate if not exercised within 30 days of the date the Claim is first made against an Insured, pursuant to Clause 7 of the policy. Further, from the date the Claim is first made against the Insureds to the date when the Insurer accepts the tender of the defense of such Claim, the Insureds shall take no action, or fail to take any required action, that prejudices the rights of the Insureds or the Insurer with respect to such Claim. Provided that the Insureds have complied with the foregoing, the Insurer shall be obligated to assume the defense of the Claim, even if such Claim is groundless, false or fraudulent. The assumption of the defense of the Claim shall be effective upon written confirmation sent thereof by the Insurer to the Named Entity. Once the defense has been so tendered, the Insured shall have the right to effectively associate with the Insurer in the defense and the negotiation of any settlement of any Claim, subject to the provisions of this Clause 8. However, the Insurer shall not be obligated to defend such Claim after the

Limit of Liability has been exhausted, or after an Insured's rejection of a Settlement Opportunity as defined in this Clause 8.

When the Insurer has not assumed the defense of a Claim pursuant to this Clause 8, the Insurer shall advance nevertheless, at the written request of the Insured, Defense Costs prior to the final disposition of a Claim. Such advanced payments by the Insurer shall be repaid to the Insurer by the Insureds or the Company, severally according to their respective interests, in the event and to the extent that the Insureds or the Company shall not be entitled under the terms and conditions of this policy to payment of such Loss.

The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer, when it has not assumed the defense of a Claim pursuant to this Clause 8, shall be entitled to effectively associate in the defense and the negotiation of any settlement of any Claim, and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such Loss is not covered under the terms of this policy.

The Insurer shall have the right to effectively associate with the Company in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Company and the Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

If the Insurer recommends a settlement within the policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the Insureds consent to such settlement, then the Insureds' applicable retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to such settlement within thirty (30) days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the retention amount shall remain the applicable amount set forth in Item 5 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then, subject to the applicable limit of liability, the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount"), plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount. It being a condition of this insurance that the remaining 50% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Company and the Insureds at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.

**9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR DESIGNATED CLAIMS**

This clause applies only to an Employment Practices Claim or a Securities Claim (each of the foregoing hereinafter referred to as a "Designated Claim").



Affixed as Appendix A hereto and made a part of this policy is a list or lists of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defense of any Designated Claim against an Insured pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 8 of this policy, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Designated Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms designated for the type of Claim and be from the jurisdiction in which the Designated Claim is brought. In the event a Designated Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the Designated Claim is maintained or where the corporate headquarters or state of formation of the Named Entity is located. In such instance, however, the Insurer shall, at the written request of the Named Entity, assign a non-Panel Counsel Firm of the Insurer's choice in the jurisdiction in which the Designated Claim is brought to function as "local counsel" on the Designated Claim to assist the Panel Counsel Firm which will function as "lead counsel" in conducting the defense of the Designated Claim.

With the express prior written consent of the Insurer, an Insured may select (in the case of the Insured defending the Claim), or cause the Insurer to select (in the case of the Insurer defending the Claim), a Panel Counsel Firm different from that selected by other Insured defendants if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this policy during the Policy Period without the consent of the Named Entity.

**10. DISCOVERY CLAUSE**

Except as indicated below, if the Named Entity shall cancel or the Named Entity or the Insurer shall refuse to renew this policy, the Named Entity shall have the right to a period of either one, two or three years following the effective date of such cancellation or nonrenewal upon payment of the respective "Additional Premium Amount" described below (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during said Discovery Period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within 30 days of the effective date of cancellation or nonrenewal. The Additional Premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The Additional Premium Amount for: (1) one year shall be 75% of the "full annual premium"; (2) two years shall be 150% of the "full annual premium"; (3) three years shall be a reasonable premium amount to be mutually agreed upon by the Insured and the Insurer. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period.

In the event of a Transaction, as defined in Clause 12, the Named Entity shall have the right, within 30 days before the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction) for a period of no less than three years or for such



longer or shorter period as the Named Entity may request. The Insurer shall offer such Discovery Period pursuant to such terms, conditions and premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

**11. CANCELLATION CLAUSE**

This policy may be canceled by the Named Entity at any time only by mailing written prior notice to the Insurer or by surrender of this policy to the Insurer or its authorized agent.

This policy may be canceled by or on the behalf of the Insurer only in the event of nonpayment of premium by the Named Entity. In the event of non-payment of premium by the Named Entity, the Insurer may cancel this policy by delivering to the Named Entity or by mailing to the Named Entity, by registered, certified, or other first class mail, at the Named Entity's address as shown in Item 1 of the Declarations, written notice stating when, not less than 30 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which the policy was in effect.

If this policy shall be canceled by the Named Entity, the Insurer shall retain the customary short rate proportion of the premium herein.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

**12. CHANGE IN CONTROL OF NAMED ENTITY**

If during the Policy Period:

- a. the Named Entity shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- b. any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the Named Entity, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction"), then this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged Wrongful Act occurring after the effective time of the Transaction. This policy may not be canceled after the effective time of the Transaction and the entire premium for this policy shall be deemed earned as of such time. The Named Entity shall also have the right to an offer by the Insurer of a Discovery Period described in Clause 10 of the policy.

The Named Entity shall give the Insurer written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

**13. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Company's and the Insureds' rights of recovery thereof, and the Company and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of the

126

Company or the Insureds. In no event, however, shall the Insurer exercise its rights of subrogation against an Insured under this policy unless such Insured has been convicted of a criminal act, or been determined to have committed a dishonest, fraudulent act or willful violation of any statute, rule or law, or obtained any profit or advantage to which such Insured was not legally entitled.

**14. OTHER INSURANCE AND INDEMNIFICATION**

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance. This policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a Claim for which this policy may be obligated to pay Loss.

In the event of a Claim against an Insured arising out of his or her service as a director, officer, trustee or governor of an Outside Entity or an Employment Practices Claim against a leased Employee as described in definition (f) of Clause 2, coverage as is afforded by this policy shall be specifically excess of indemnification provided by such Outside Entity or such leasing company and any insurance provided to such Outside Entity or such leasing company.

Further, in the event other insurance is provided to the Outside Entity or leasing company referenced in the above paragraph, or is provided under any pension trust or employee benefit plan fiduciary liability insurance policy, and such other insurance is provided by the Insurer or any member company of American International Group, Inc. (AIG) (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a Claim) then the Insurer's maximum aggregate limit of liability for all Losses combined in connection with a Claim covered, in part or in whole, by this policy and such other insurance policy issued by AIG shall not exceed the greater of the Limit of Liability of this policy or the limit of liability of such other AIG insurance policy.

**15. NOTICE AND AUTHORITY**

It is agreed that the Named Entity shall act on behalf of the Subsidiaries and all Insureds with respect to the giving of notice of a Claim, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a Claim to the Insurer and the exercising or declining of any right to a Discovery Period or Reinstated Limit.

**16. ASSIGNMENT**

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

**17. DISPUTE RESOLUTION PROCESS**

The Insured shall have the option, in its sole discretion, to submit all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, to the alternative dispute resolution process ("ADR") set forth in this clause.

The Insureds may elect the type of ADR discussed below. The Insurer agrees to submit to the ADR process chosen by the Insured. Once elected, the ADR cannot be terminated prior to a determination without the consent of the Insured and the Insurer.

There shall be two choices of ADR: (1) non-binding mediation administered by the American Arbitration Association, in which the insurer and insureds shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association under or in accordance with its then-prevailing Commercial Arbitration Rules. In either mediation or arbitration, the mediator(s) or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator(s) or arbitrators shall also give due consideration to the general principles of the law of the state where the Named Entity is incorporated or formed in the construction or interpretation of the provisions of this policy; provided, however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorneys fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR.

Either choice of ADR may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations page as the mailing address for the Named Entity. The Named Entity shall act on behalf of all insureds in deciding to proceed with ADR under this clause.

**18. ACTION AGAINST INSURER**

Except as provided in Clause 17 of the policy, no action shall lie against the insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insureds' obligation to pay shall have been finally determined either by judgment against the insureds after actual trial or by written agreement of the insureds, the claimant and the insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the insurer as a party to any action against the insureds or the Company to determine the insureds' liability, nor shall the insurer be impleaded by the insureds or the Company or their legal representatives. Bankruptcy or insolvency of the Company or the insureds or of their estates shall not relieve the insurer of any of its obligations hereunder.

**19. REPRESENTATIONS AND SEVERABILITY**

In granting coverage under this Policy, it is agreed that the insurer has relied upon the statements and representations contained in the application for this policy (including materials submitted thereto and, if this is a renewal application, all such previous policy applications for which this policy is a renewal) as being accurate and complete. All such statements and representations shall be deemed to be material to the risk assumed by the insurer, are the basis of this policy and are to be considered as incorporated into this policy.

With respect to such statements and representations, no knowledge or information possessed by any individual insured, except for those person or persons who executed the application, shall be imputed to any other individual insured. If any person who executed the application knew that such statement or representation was inaccurate or incomplete,

then this policy will be void as to all Insureds other than individual Insureds who are "non-employee Directors" of the Company and who did not personally know the statement or representation to be inaccurate or incomplete. (The term "non-employee Director" shall have the meaning described in Securities & Exchange Commission rules or regulations promulgated pursuant to Section 16 of the Securities Exchange Act of 1934).

**20. WORLDWIDE TERRITORY**

This policy shall apply to Claims made against an Insured anywhere in the world.

**21. HEADINGS**

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

**APPENDIX A  
SECURITIES CLAIMS PANEL COUNSEL LIST**

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is now accessible through our online Panel Counsel Directory at <http://www.briefbase.com/default.aspx> at the "Panel Counsel" tab. To access the applicable online Panel Counsel Directory, please go to the website, click on the "Panel Counsel" tab and then click on the "Directors & Officers (Securities Claims)" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**

Revised (6/08)

**COPY**

**APPENDIX A  
EMPLOYMENT PRACTICES CLAIM PANEL COUNSEL**

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is now accessible through our online Panel Counsel Directory at <http://www.briefbase.com/default.aspx> at the "Panel Counsel" tab. To access the applicable online Panel Counsel Directory, please go to the website, click on the "Panel Counsel" tab and then click on "Employment Practices Liability" link and select the applicable Panel Counsel Directory, either the "4-97 Monoline/Public Companies" link or the "Private Edge" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**

Revised (6/08)

**COPY**

131

**ENDORSEMENT# 1**

This endorsement, effective 12:01 a.m., February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**ILLINOIS**

**AMENDATORY ENDORSEMENT**

Wherever used in this endorsement: 1) "we", "us", "our", and "Insurer" mean the insurance company which issued this policy; and 2) "you", "your", "Named Insured", and "Insured" mean the Named Corporation, Named Organization, Named Sponsor, Named Insured, or Insured stated in the declarations page; and 3) "Other Insured(s)" means all other persons or entities afforded coverage under the policy.

**CANCELLATION AND NONRENEWAL**

A. The cancellation condition of this policy is replaced by the following:

**CANCELLATION**

1. The Named Insured may cancel this policy by mailing to the Insurer advance written notice of cancellation.
2. If this policy has been in effect for sixty (60) days or less, the Insurer may cancel this policy by mailing to the Named Insured written notice of cancellation at least:
  - a. Ten (10) days before the effective date of cancellation if the Insurer cancels for nonpayment of premium; or
  - b. Thirty (30) days before the effective date of cancellation if the Insurer cancels for any other reason.
3. If this policy has been in effect for more than sixty (60) days the Insurer may cancel this policy only for one or more of the following reasons:
  - a. Nonpayment of premium;
  - b. The policy was obtained through a material misrepresentation;
  - c. The Named Insured or Other Insured(s) have violated any of the terms and conditions of the policy;
  - d. The risk originally accepted has measurably increased;
  - e. Certification to the Director of Insurance of the loss of reinsurance by the Insurer which provided coverage to the Insurer for all or a substantial part of the underlying risk insured; or
  - f. A determination by the Director that the continuation of the policy could place the Insurer in violation of the insurance laws of this State.

If the Insurer cancels this policy based on one or more of the above reasons except for nonpayment of premium, the Insurer will mail written notice to the Named Insured at least sixty (60) days before the effective date of cancellation. When cancellation is for nonpayment of premium, the Insurer will mail notice at least ten (10) days before the effective date of cancellation.

**END 001**

**ENDORSEMENT # 7 (continued)**

- 4. The insurer will mail the notice to the Named Insured and the agent or broker at the last addresses known to the insurer.
- 5. Notice of cancellation will state the effective date of cancellation and a specific explanation of the reason or reasons for cancellation. The policy period will end on that date.
- 6. If this policy is cancelled, the insurer will send the Named Insured any premium refund due. If the insurer cancels, the refund will be pro rata. If the Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the insurer has not made or offered a refund.
- 7. Proof of mailing will be sufficient proof of notice.

**B. The following is added:**

**NONRENEWAL**

- 1. If the insurer decides not to renew this policy, the insurer will mail written notice stating the reason for nonrenewal to the Named Insured's last mailing address known to the insurer at least sixty (60) days before the expiration date of the policy. A copy of the notice will also be sent to:
  - a. The broker, if known to the insurer, or the agent of record; and
  - b. The last known mortgagee or lienholder named in the policy at the last mailing address known to the insurer.

This paragraph does not apply if the insurer has manifested a willingness to renew directly to the Named Insured.

All other terms, conditions and exclusions remain unchanged.

*[Handwritten Signature]*

**AUTHORIZED REPRESENTATIVE**

**END 001**



133

**ENDORSEMENT# 2**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 Issued to INDALOX HOLDINGS FINANCE, INC.

by Illinois National Insurance Company

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DIRECTORS, OFFICERS AND PRIVATE COMPANY**

**ILLINOIS AMENDATORY ENDORSEMENT**

The Policy is hereby amended as follows:

Clause 2. DEFINITIONS, Item (e) "Defense Costs" is deleted in its entirety and replaced with the following:

(e) "Defense Costs" means reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a Claim against the Insureds, but excluding salaries of officers or Employees of the Company or the Insurer.

Clause 2. DEFINITIONS, Item (k) "Loss" is deleted in its entirety and replaced with the following:

(k) "Loss" means damages (including back pay and front pay), judgments, settlements, post-judgment interest and Defense Costs; however, Loss shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds; (4) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (5) any liability or costs incurred by any Insured to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an Employment Practices Claim; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

If an additional premium is stated in Item 7 of the Declarations page, then Loss shall specifically include, (subject to the policy's other terms, conditions and exclusions, including but not limited to exclusions relating to personal profit or advantage, deliberate fraud, criminal acts or willful violation of any statute, rule or regulation) punitive, exemplary and multiple damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). It is further understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages. If an additional premium is not stated in Item 7 of the Declarations then Loss shall not include punitive, exemplary damages or the multiplied portion of multiple damages.

END 002

134

**ENDORSEMENT# 2 (continued)**

Clause 10. **DISCOVERY CLAUSE**, is deleted in its entirety and replaced with the following:

**10. DISCOVERY CLAUSE**

Except as indicated below, if the Named Entity or the Insurer shall cancel or the Named Entity or the Insurer shall refuse to renew this policy, the Named Entity shall have the right to a period of either one, two or three years following the effective date of such cancellation, or nonrenewal upon payment of the respective "Additional Premium Amount" described below (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during said Discovery Period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within 30 (thirty) days of the effective date of cancellation or nonrenewal. The Additional Premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable.

The Additional Premium Amount for: one (1) year shall be 75% of the "full annual premium"; two (2) years shall be 150% of the "full annual premium"; three (3) years shall be a reasonable premium amount to be mutually agreed upon by the Insured and the Insurer. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period.

In the event of a Transaction, as defined in Clause 12, the Named Entity shall have the right, within thirty (30) days after the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction) for a period of no less than three years or for such longer or shorter period as the Named Entity may request. The Insurer shall offer such Discovery Period pursuant to such terms, conditions and premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

In the event of cancellation or nonrenewal by the Insurer for the nonpayment of premium, any monies received by the Insurer as payment for Discovery Period shall be first applied to such premium owing for the policy. The Discovery Period will not take effect until the premium owing for the policy is paid in full and unless the premium owing Discovery Period is paid promptly when due.

Clause 14. **OTHER INSURANCE AND INDEMNIFICATION**, is deleted in its entirety and replaced with the following:

**14. OTHER INSURANCE AND INDEMNIFICATION**

If there is any valid and collectible insurance which applies to any Loss covered by this policy, the Insurer shall not be liable for a greater proportion of such Loss than the applicable Limit of Liability under this policy for such loss bears to the total applicable Limit of Liability of all valid and collectible insurance against them unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this policy.

In the event of a Claim against an Insured arising out of his or her service as a director, officer, trustee or governor of an Outside Entity or an Employment Practices Claim against a leased Employee as described in definition (f) of Clause 2,

END 002

135

**ENDORSEMENT# 2 (continued)**

coverage as is afforded by this policy shall be specifically excess of indemnification provided by such Outside Entity or such leasing company and any insurance provided to such Outside Entity or such leasing company.

Further, in the event other insurance is provided to the Outside Entity or leasing company referenced in the above paragraph, or is provided under any pension trust or employee benefit plan fiduciary liability insurance policy, and such other insurance is provided by the Insurer or any member company of American International Group, Inc. (AIG) (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a Claim) then the Insurer's maximum aggregate Limit of Liability for all Losses combined in connection with a Claim covered, in part or in whole, by this policy and such other insurance policy issued by AIG shall not exceed the greater of the Limit of Liability of this policy or the limit of liability of such other AIG insurance policy.

Clause 17. DISPUTE RESOLUTION PROCESS, is deleted in its entirety and replaced with the following:

**17. DISPUTE RESOLUTION PROCESS**

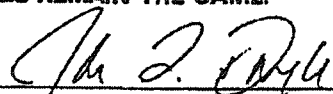
The Insured shall have the option, in its sole discretion, to submit all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, to the alternative dispute resolution process ("ADR") set forth in this clause.

The Insurer agrees to submit to the ADR process chosen by the Insured. Once elected, the ADR cannot be terminated prior to a determination without the consent of the Insured and the Insurer.

There shall be non-binding mediation administered by the American Arbitration Association, in which the Insurer and Insureds shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules. The mediator(s) shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator(s) shall also give due consideration to the general principles of the law of the state where the Named Entity is incorporated or formed in the construction or interpretation of the provisions of this policy; provided, however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the policy. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR.

ADR may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations page as the mailing address for the Named Entity. The Named Entity shall act on behalf of all Insureds in deciding to proceed with ADR under this clause.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS SHALL REMAIN THE SAME.**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

**END 002**

136

**ENDORSEMENT# 3**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of  
policy number 01-589-00-75  
issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**COVERAGE TERRITORY ENDORSEMENT**

Payment of loss under this policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").



**AUTHORIZED REPRESENTATIVE**

**END 003**

89644 (7/05) **COPY**

Page 1 of 1

139

**ENDORSEMENT# 4**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**NOTICE OF CLAIM  
(REPORTING BY E-MAIL)**

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. **Email Reporting of Claims:** In addition to the postal address set forth for any Notice of Claim Reporting under this policy, such notice may also be given in writing pursuant to the policy's other terms and conditions to the Insurer by email at the following email address:

c-claim@aig.com

Your email must reference the policy number for this policy. The date of the Insurer's receipt of the emailed notice shall constitute the date of notice.

In addition to Notice of Claim Reporting via email, notice may also be given to the Insurer by mailing such notice to: c-Claim for Financial Lines, AIG Domestic Claims, Inc., 175 Water Street, 9th Floor, New York, New York 10038 or faxing such notice to (866) 227-1750.

2. **Definitions:** For this endorsement only, the following definitions shall apply:
  - (a) "Insurer" means the "insurer," "Underwriter" or "Company" or other name specifically ascribed in this policy as the insurance company or underwriter for this policy.
  - (b) "Notice of Claim Reporting" means "notice of claim/circumstance," "notice of loss" or other reference in the policy designated for reporting of claims, loss or occurrences or situations that may give rise or result in loss under this policy.
  - (c) "Policy" means the policy, bond or other insurance product to which this endorsement is attached.
3. This endorsement does not apply to any Kidnap & Ransom/Extortion Coverage Section, if any, provided by this policy.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**



**AUTHORIZED REPRESENTATIVE**

©American International Group, Inc. All rights reserved

**END 004**

**ENDORSEMENT# 5**

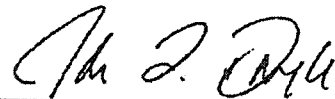
This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of  
policy number 01-589-00-75  
issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**CAPTIVE INSURANCE COMPANY EXCLUSION**

In consideration of the premium charged, it is hereby understood and agreed that the Insurer shall not be liable to make any payments for Loss in connection with any Claim(s) made against any Insured alleging, arising out of, based upon or attributable to the ownership, management, maintenance and/or control by the Company of any captive insurance company or entity, including but not limited to any Claim(s) alleging the insolvency or bankruptcy of the Named Entity as a result of such ownership, operation, management and control.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

**END 005**

139

**ENDORSEMENT# 6**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of  
policy number 01-589-00-75  
issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**COMMISSIONS EXCLUSION**

In consideration of the premium charged, It is hereby understood and agreed that the Insurer shall not be liable to make any payment for Loss in connection with any Claim(s) made against any Insured(s) alleging, arising out of, based upon, or attributable to:

- (i) Payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign government or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated; or
- (ii) Payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, principal shareholders, or owners or employees, or "affiliates" (as that term is defined in The Securities Exchange Act of 1934, including any officers, directors, agents, owners, partners, representatives, principal shareholders or employees of such affiliates) of any customers of the company or any members of their family or any entity with which they are affiliated; or
- (iii) Political contributions, whether domestic or foreign.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**



**AUTHORIZED REPRESENTATIVE**

**END 006**

140

**ENDORSEMENT# 7**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT  
(BROAD FORM)**

In consideration of the premium charged, it is hereby understood and agreed that the Insurer shall not be liable to make any payment for Loss in connection with any Claim(s) made against any Insured(s):

A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly the hazardous properties of nuclear material, including but not limited to:

- (1) nuclear material located at any nuclear facility owned by, or operated by or on behalf of, the Company, or discharged or dispersed therefrom; or
- (2) nuclear material contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the Company; or
- (3) the furnishing by an Insured or the Company of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; or
- (4) claims for damages to the company or its shareholders which alleges, arises from, is based upon, is attributed to or in any way involves, directly or indirectly, the hazardous properties of nuclear material.

B.

- (1) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its Limit of Liability; or,
- (2) with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into the United States of America, or any agency thereof, with any person or organization.

As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in law amendatory thereof;

**END 007**



141

**ENDORSEMENT# 7 (continued)**

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

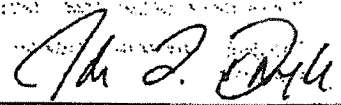
"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means:

- (a) any nuclear reactor;
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**



**AUTHORIZED REPRESENTATIVE**

142

**ENDORSEMENT# 8**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to INDALOX HOLDINGS FINANCE, INC.

by Illinois National Insurance Company

**PrivateEdge AMENDATORY ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

- 1. Clause 2, DEFINITIONS, is amended as follows:
  - (a) Paragraph (c), "Company," is deleted in its entirety and replaced with the following:
    - (c) "Company" means (i) the Named Entity; (ii) any Subsidiary thereof; and (iii) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.
  - (b) Paragraph (f), "Employee," is deleted in its entirety and replaced with the following:
    - (f) "Employee(s)" means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee in his or her capacity as such. An individual who is leased to the Company shall also be an Employee, but only if the Company provides indemnification to such leased individual in the same manner as is provided to the Company's employees. Any other individual who is contracted to perform work for the Company, or who is an independent contractor for the Company shall also be an Employee, but only if the Company provides indemnification to such individual in the same manner as that provided to the Company's employees, pursuant to a written contract.
  - (c) Paragraph (m), "No Liability," is deleted in its entirety.
  - (d) In paragraph (n), "Outside Entity," subparagraph (n)(1) is deleted in its entirety and replaced with the following:
    - (1) any not-for-profit organization; or
  - (e) Paragraph (s), "Subsidiary," is deleted in its entirety and replaced with the following:
    - (s) "Subsidiary" means:
      - (1) any for-profit organization of which the Named Entity has Management Control ("Controlled Entity") on or before the inception of the Policy Period either directly or indirectly through one or more other Controlled Entities;
      - (2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than 25% of the total consolidated assets of the Company as of the inception date of this policy which the Named Entity first had Management Control

END 008

**ENDORSEMENT # 8 (continued)**

during the Policy Period, either directly or indirectly through one or more other Controlled Entities. The Named Entity shall provide the Insurer with full particulars of the new Subsidiary before the end of the Policy Period; or

- (3) an organization which the Named Entity first had Management Control during the Policy Period (other than a for-profit organization described in paragraph (2) above), either directly or indirectly through one or more other Controlled Entities, but only upon the condition that within 90 days of its becoming a Subsidiary, the Named Entity shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to such new Subsidiary.

An organization becomes a Subsidiary when the Named Entity has Management Control of such Subsidiary, either directly or indirectly, through one or more of its Controlled Entities. An organization ceases to be a Subsidiary when the Named Entity ceases to have Management Control in such Subsidiary, either directly, or indirectly through one or more of its Controlled Entities.

In all events, coverage as is afforded under this policy with respect to a Claim made against any Subsidiary and/or any Individual Insured shall only apply for Wrongful Acts committed or allegedly committed after the effective time the Named Entity obtained Management Control of such Subsidiary, and prior to the effective time that the Named Entity no longer has Management Control over such Subsidiary.

(f) Clause 2. DEFINITIONS is further amended to include the following definitions at the end of that Clause:

(aa) "Domestic Partner" means any individual person qualifying as a domestic partner under: (1) the provisions of any applicable federal, state, or local law; or (2) the provisions of any formal program established by the Named Entity or any Subsidiary.

(bb) "Management Control" means: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a joint venture or partnership or the management board of a limited liability company.

2. Clause 3. EXTENSIONS is deleted in its entirety and replaced with the following:

3. EXTENSIONS Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of

END 008

K44

**ENDORSEMENT# 8 (continued)**

deceased Individual Insureds, and the legal representatives of Individual Insureds in the event of incompetency, insolvency or bankruptcy, who were Individual Insureds at the time the Wrongful Act upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Loss arising from all Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or Domestic Partner of an Individual Insured for all Claims arising solely out of his or her status as the spouse or Domestic Partner of an Individual Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Individual Insured and the spouse or Domestic Partner, or property transferred from the Individual Insured to the spouse or Domestic Partner; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse or Domestic Partner, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Individual Insured, subject to the policy's terms, conditions and exclusions.

It is further understood and agreed that in the event that the Insurer shall announce either: (1) a new Directors and Officers insurance policy form; or (2) an enhancement of coverage endorsement to this policy form, which is to be made available to all Insureds and for which no additional premium is required, then the Named Entity shall have the right to such new policy or such new coverage enhancement endorsement subject to all underwriting information or particulars as the Insurer may require for such new policy or enhanced coverage.

3. In Clause 4. **EXCLUSIONS**, paragraphs (a), (b), (c) and (i) are deleted in their entirety and replaced with the following:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any judgment, final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes the Insured(s) were not legally entitled;
- (b) arising out of, based upon or attributable to: (1) the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law if any judgment, final adjudication or an alternative dispute resolution proceeding establishes that such 16(b) violation occurred; or (2) the payment to any Insured(s) of any remuneration without the previous approval of the stockholders of the Company, if any judgment, final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes such payment to be illegal;
- (c) arising out of, based upon or attributable to the committing of any criminal, fraudulent or dishonest act, or any willful violation of any statute, rule or law, if any judgment, final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes that such criminal, fraudulent, dishonest act or willful violation of any statute, rule or law occurred;
- (i) which is brought by any Insured or by the Company; or which is brought by any security holder of the Company, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation

**END 008**

145

**ENDORSEMENT # 8 (continued)**

of, or intervention of, any Insured; provided, however, this exclusion shall not apply to:

- (1) any Claim brought by an Individual Insured where such Claim is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a Claim which is not otherwise excluded by the terms of this policy;
- (2) an Employment Practices Claim brought by an Employee of the Company other than an Employee who is or was a director, member of the Board of Managers or management committee member of the Named Entity;
- (3) any Claim brought by any past director, officer, management committee member or member of the Board of Managers of a Company, who has not served as a duly elected or appointed director, officer, management committee member or member of the Board of Managers (or equivalent position) of or consultant to a Company for at least four (4) years prior to such Claim being first made against any person; or
- (4) any Claim brought by a director, officer, management committee member or member of the Board of Managers of a Company formed and operating in a Foreign Jurisdiction against such Company or a director, officer, management committee member or member of the Board of Managers thereof, provided that such Claim is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof);

4. Clause 6, **RETENTION CLAUSE** is amended by deleting the last paragraph of that Clause.

5. In Clause 7, **NOTICE/REPORTING PROVISIONS**, paragraph (a) is deleted in its entirety and replaced with the following:

- (a) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after the Claim is reported to or first becomes known by the risk manager or general counsel (or equivalent position) of the Company, but in all events a Claim must be reported no later than either:
  - (1) anytime during the Policy Period or during the Discovery Period (if applicable); or
  - (2) within thirty (30) days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim(s) is reported no later than thirty (30) days after the date such Claim was first made against an Insured.

6. The policy is amended to include the following Clause at the end of the policy:

**CA-1. ORDER OF PAYMENTS**

In the event of Loss arising from any Claim(s) for which payment is due under the provisions of this policy but which Loss, in the aggregate, exceeds the remaining available Limit of Liability of this policy, then this policy shall:

- (a) first pay such Loss for which coverage is provided under Coverage A of the policy, then with respect to whatever remaining amount of the Limit of Liability is available after payment of such Loss,

END 008

146

**ENDORSEMENT# 8 (continued)**

(b) then pay such Loss for which coverage is provided by Coverage B of the policy.

In the event of Loss arising from a Claim(s) for which payment is due under the provisions of this policy (including those circumstances described above in this Clause), the Insurer shall at the written request of the Named Entity:

(a) first pay such Loss for which coverage is provided under Coverage A of the policy, then

(b) either pay or hold payment for such Loss for which coverage is provided by Coverage B of the policy.

In the event that the Insurer withholds payment under Coverage B of the policy pursuant to the above request, then the Insurer shall at any time in the future, at the request of the Company, release such Loss payment to the Company, or make such Loss payment directly to an individual director or officer in the event of covered Loss under any Claim(s) covered under this policy pursuant to Coverage A of the policy.

Nothing in this Clause shall be construed to increase the Limit of Liability of the Insurer under this policy which such Limit of Liability shall remain the maximum liability of the Insurer under all Claims under all Coverage under this policy combined.

7. In the event that there is an inconsistency between an endorsement to this policy, whether such endorsement precedes or follows this endorsement in time or sequence ("Other AIG Amendatory Endorsement"), and any term or condition of this endorsement, then it is understood and agreed that the Insurer shall apply those terms and conditions of either the Other AIG Amendatory Endorsement or this endorsement which are more favorable to the Insured.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

END 008

147

**ENDORSEMENT# 9**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**LEADERS PREFERRED ENDORSEMENT  
PRIVATE EDGE**

In consideration of the premium charged, it is understood and agreed that solely in regard to Employment Practices Claims and unless modified by another endorsement to this policy, the policy is amended as follows:

**1. Automatic new acquisitions coverage**

Subparagraph (2) of the Definition of "Subsidiary" is amended to read as follows:

- (2) automatically any for-profit organization whose securities are not publicly traded and which becomes a Subsidiary during the Policy Period, but only if:
  - (i) its assets total less than 25% of the total consolidated assets of the Company as of the inception date of this policy; or
  - (ii) its Employees total less than the lesser of: (A) 25% of the total Employees of the Company as of the inception date of this policy; or (B) five hundred (500); or
  - (iii) such for-profit organization becomes a Subsidiary during the last sixty (60) days of the Policy Period;

The Named Entity shall provide the Insurer with full particulars of the new Subsidiary before the end of the Policy Period.

**2. Clause 2. Definitions of Insured and Employee amended**

Definition of "Employee(s)" is hereby deleted in its entirety and replaced with the following:

"Employee(s)" mean any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal, temporary Employee or volunteer of the Company in his or her capacity as such. An individual who is leased to the Company shall also be an Employee. Any other individual who is contracted to perform work for the Company, or who is an independent contractor for the Company shall also be an Employee.

Subparagraph (4) of the Definition of "Individual Insured(s)" is hereby deleted in its entirety and replaced with the following:

- (4) any Insured Employee of the Company.

The following Definition of "Insured Employee" is hereby added to the policy:

"Insured Employee" means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal, temporary Employee or volunteer of the Company in his or her capacity as such. An individual who is leased to the Company shall also be an Insured Employee, but only if the Company provides indemnification to such leased individual in the same manner as is provided to the Company's Employees. Any other individual who is contracted to perform

**END 009**

148

**ENDORSEMENT # 9 (continued)**

work for the Company, or who is an independent contractor for the Company shall also be an Insured Employee, but only if the Company provides Indemnification to such individual in the same manner as is provided to the Company's Employees.

**3. Director or Officer Definition**

"Director or Officer" means an individual Insured(s) as defined in Definition (I)(1), (2) and (3) of the policy.

**4. Employment Practices Violation(s) - negligent hiring coverage**

Definition of "Employment Practices Violation(s)" is amended by adding the following named peril:

(13) negligent hiring relating to any of the above,

**5. Employment Practices Violation(s) - Third Party Coverage Sexual Harassment and Discrimination Coverage**

The last paragraph of the Definition of "Employment Practices Violation(s)" is deleted in its entirety and replaced with the following:

With respect to any customer(s), client(s), vendor(s), supplier(s) or distributor(s), Employment Practices Violation(s) shall mean any actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

**6. Punitive, Exemplary and Multiple Damages Coverage for Employment Practices Claims - Law most favorable**

Solely as respects coverage provided to an Employment Practices Claim(s), the Definition of "Loss" is amended as follows:

Notwithstanding the foregoing, Loss shall specifically include, (subject to the policy's other terms, conditions and exclusions), punitive, exemplary and multiple damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). It is further understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

**7. Outside Entity Coverage**

Definition of "Outside Entity" is amended by deleting subparagraph (1) in its entirety and replacing it with the following:

(1) any not-for-profit organization; or

Definition of "Wrongful Act" is amended by deleting subparagraph (3) in its entirety and replacing it with the following:

(3) with respect to service on an Outside Entity, any matter claimed against such Individual Insured(s) as defined in (I)(2) arising out of such Insured serving as a director, officer, trustee or governor of an Outside Entity in such capacity, but only if such service is at the specific direction and/or request of the Company. Provided, however, in the event of a disagreement between the Company and an Insured as to whether such Individual Insured was acting at the specific direction and/or request of the Company, it is hereby understood and agreed that this policy shall

END 009



**ENDORSEMENT # 9 (continued)**

abide by the determination of the Named Entity on this issue and such determination shall be made by written notice to the Insurer within thirty (30) days after the Claim against them is made. In the event no determination is made within such period, this endorsement shall apply as if the Company determined that the Insured was not acting at the Company's specific direction or request. Except in the case of the Company determining that the Insured was not serving at their specific direction or request, in such case, the determination may be made at any time.

**8. Limitations to Exclusions**

**Conduct Exclusions**

Clause 4. Exclusions (a), (b) and (c) are hereby deleted in their entirety and replaced with the following:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which a final adjudication adverse to the Insured(s) or an alternative dispute resolution proceeding establishes the Insured(s) were not legally entitled; provided, however that this exclusion shall not apply to any Employment Practices Claim;
- (b) arising out of, based upon or attributable to: (1) the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law if a final adjudication or an alternative dispute resolution proceeding establishes that such 16(b) violation occurred; (2) the payment to any Insured(s) of any remuneration without the previous approval of the stockholders of the Company, if a final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes such payment to be illegal;
- (c) arising out of, based upon or attributable to the committing of any criminal, fraudulent or dishonest act, or any willful violation of any statute, rule or law, if a judgment or other final adjudication adverse to the Insured(s) or an alternative dispute resolution proceeding establishes that such criminal, fraudulent, dishonest act or willful violation of any statute, rule or law occurred; provided, however that the portion of the foregoing exclusion regarding any willful violation of any statute, rule or law shall not apply to a covered Claim for punitive, exemplary or multiple damages;

**Contract Exclusion**

Clause 4. Exclusion (h) is deleted in its entirety and replaced with the following:

- (h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or any other Insured under any express contract or agreement; provided, however, that this exclusion shall not apply to:
  - (1) the extent any liability does not arise under such express contract or agreement; or

(2) a Director or Officer;

**Insured v. Insured**

Clause 4. Exclusion (l) is amended by deleting subparagraph (2) in its entirety and replacing it with the following:

**END 009**

150

**ENDORSEMENT# 3 (continued)**

(2) an Employment Practices Claim brought by an Employee of the Company;

**Retaliation**

Notwithstanding Clause 4. Exclusions (o) and (p), this policy shall provide coverage (subject to the policy's other terms, conditions and exclusions) for Loss arising from a Claim for Retaliation against an Employee in response to such Employee's attempt to exercise his or her rights under the law including any of the following laws or benefit rights:

- (1) Employee Retirement Income Security Act of 1974 (ERISA), specifically including Claims against an Insured brought under Section 510 of ERISA;
- (2) Fair Labor Standards Act (except the Equal Pay Act);
- (3) National Labor Relations Act (NLRA);
- (4) Worker Adjustment and Retraining Notification Act (WARN);
- (5) Consolidated Omnibus Budget Reconciliation Act (COBRA);
- (6) Occupational Safety and Health Act (OSHA);
- (7) worker's compensation;
- (8) disability benefits;
- (9) unemployment compensation;
- (10) unemployment insurance;
- (11) retirement benefits or social security benefits; or
- (12) any rules or regulations of the foregoing promulgated thereunder.

**9. Notice Provisions**

Clause 7(a) is deleted in its entirety and replaced with the following:

(a) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim as soon as practicable after the Claim is reported to or first becomes known by the Human Resources Department or Office of General Counsel of the Company; (or similar department or office) or in the absence of such department or office any Director or Officer of the Company, and upon the earliest occurrence of the following:

- (1) The Claim is or is sought to be certified as a class action; or
- (2) The Claim is brought by more than one claimant or is sought to be consolidated with another claim brought by another claimant; or
- (3) The Claim alleges sexual harassment by a duly elected or appointed corporate Director or Officer of the Company; or
- (4) The Claim is a Securities Claim; or
- (5) Total Loss (including Defense Costs) of the Claim is reasonably estimated by the Company or defense counsel for the Company to exceed 50% of the applicable Retention amount stated in Item 5. of the Declarations

but in all events, all Claims, including but not limited to those listed in (1) through (5) above, shall be reported to the Insurer no later than:

**END 009**

151

**ENDORSEMENT# 9 (continued)**

- (1) anytime during the Policy Period or during the Discovery Period (if applicable); or
- (2) within thirty (30) days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim is reported no later than thirty (30) days after the date such Claim was first made against an Insured.

The Named Entity shall be entitled to report Claims by submitting a quarterly bordereau of Claims, commencing on the inception date of this policy; provided that in all events all bordereaus must be reported to the Insurer no later than the end of the Policy Period. The bordereau shall include copies of pertinent background documentation descriptive of any such Claim to the same extent as if such Claim were being reported individually and not on the bordereau. Any such bordereau may also contain notice of circumstances that may give rise to Claims pursuant to the terms and conditions of Clause 7(c).

**10. Defense Provisions**

Clause 8 of the policy is amended as follows:

- (a) The first sentence of the second paragraph of Clause 8 is hereby deleted in its entirety and replaced with the following:

Notwithstanding the preceding paragraph, the Named Entity, on behalf of all Insureds, shall have the right to tender the defense of the Claim to the Insurer. The Named Entity shall exercise this right by giving written notice to the Insurer pursuant to Clause 7 of this policy.

- (b) The last paragraph of Clause 8 is deleted in its entirety and replaced with the following:

**Settlement Clause**

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then, subject to the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the applicable limit of liability, the amount for which the Insurer could have settled such Claim plus Defense Costs Incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 70% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 30% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Company and the Insureds at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5. of the Declarations.

It is further understood and agreed that with respect to (i) Defense Costs jointly incurred by, (ii) any joint settlement made by and/or (iii) any judgment of joint and several liability against the Company and any Individual Insured in connection with a Claim, the Company and the Individual Insured and the Insurer agree to use their best efforts to determine a fair and proper allocation of the amounts as between the Company and the Individual Insureds and the Insurer, taking into account the relative legal and financial exposures, and the relative benefits obtained by the Individual Insureds and the Company.

- (c) The following paragraphs are hereby added to Clause 8:

Settlements within Retention Amount (Inclusive of Defense Costs): Insurer waives consent

**END-009**

152

**ENDORSEMENT # 9 (continued)**

Notwithstanding any provision in this Clause 8, or elsewhere in this policy, that gives the Insurer the right of consent with respect to the settlement of any Claim, if all Insureds against whom a Claim is asserted may dispose of such Claim and any then pending Claims that are subject to the same Retention amount through a settlement pursuant to which all Loss (Inclusive of Defense Costs) combined shall not exceed such Retention amount, then the Insurer's consent shall not be required for such settlement.

**Settlements outside Retention Amount (Inclusive of Defense Costs): 10% Retention reduction**

In the event of a Settlement Opportunity (as defined in Clause 8) in an amount (Inclusive of Defense Costs) which exceeds the Retention amount stated in Item 5 of the Declarations page, if all defendant Insureds consent to such settlement, then the Insured's applicable Retention amount shall be retroactively reduced by ten percent (10%) for such Loss. The foregoing shall only apply to the first Settlement Opportunity.

**Choice of Counsel/ Duty to Defend: Mutual Consent Provisions**

Subject to the provisions of Clause 8, the Named Entity may choose on behalf of all Insureds whether to defend a Claim themselves or tender the Claim over to the Insurer to defend.

**11. Clause 9 Panel Counsel Amendment**

Clause 9 is hereby amended by adding the following at the end thereof:

Notwithstanding the foregoing, other than for Claims described in paragraph (4) below, Clause 9 shall not apply to a single plaintiff action Claim alleging discrimination or sexual harassment against an Insured if the total Loss (including Defense Costs) of such Claim does not exceed, or is not reasonably estimated by the Human Resources Department or Office of General Counsel or defense counsel for the Company to exceed, 50% of the applicable Retention amount stated in Item 5 of the Declarations (hereinafter "Non-Designated Claim"), subject to the following conditions:

- (1) The Insured or the Company shall select either a Panel Counsel Firm, pursuant to the terms and conditions of Clause 9, or a law firm listed below ("Non-Panel Counsel Firm") to conduct the defense of such Non-Designated Claims. A Non-Panel Counsel Firm may only be selected for a Non-Designated Claim brought in the jurisdiction indicated below. In the event a Non-Designated Claim is brought in a jurisdiction not indicated below, then the Insured shall select a Panel Counsel Firm, pursuant to the terms and conditions of Clause 9, to conduct the defense of such Claim.
- (2) If at any time either: (i) the total Loss (including Defense Costs) of such Non-Designated Claim exceeds, or becomes reasonably estimated by the Company or defense counsel for the Company to exceed 50% of the applicable Retention amount stated in Item 5 of the Declarations, or (ii) the Defense Costs incurred in the defense of such Non-Designated Claim is the lesser of 100% of the applicable Retention amount or \$100,000, then a Panel Counsel Firm shall be selected by the Insurer, pursuant to the terms and conditions of Clause 9, to conduct the defense of such Non-Designated Claim as lead counsel. In such an event, however, the Insurer may, at its sole discretion, maintain the Non-Panel Counsel Firm in the jurisdiction in which the Non-Designated Claim is brought to

**END 009**

ENDORSEMENT# 9 (continued)

function as "local counsel" on the Non-Designated Claim to assist the Panel Counsel Firm which will function as "lead counsel" in such Claim.

- (3) In all events, Defense Costs may not be incurred by or at the direction of any Non-Panel Counsel Firm for any Non-Designated Claim without the prior written consent of the Insurer, such consent not to be unreasonably withheld, subject to all the terms and conditions of Clause 8.
- (4) This exception to Clause 9 herein does not, in any way, apply to a Claim: (i) for which the Insurer has assumed the defense pursuant to Clause 8 of this policy; (ii) alleging Retaliation; (iii) brought in the form of a class action or multiple plaintiff action; or (iv) alleging discrimination or sexual harassment conduct by a duly elected or appointed Director or Officer of the Company.

ADDITIONAL FIRM

JURISDICTION

**12. Other Insurance**

The section of the policy entitled OTHER INSURANCE AND INDEMNIFICATION is amended by deleting the first paragraph thereof in its entirety and replacing it with the following:

Unless expressly written to be excess over other applicable insurance, it is intended that the insurance provided by this policy shall be primary.

**13. Alternative Dispute Resolution ("ADR")**

The Section of the policy entitled DISPUTE RESOLUTION PROCESS is amended by addition of the following at the end thereof:

Either choice of ADR may be commenced in any of the following locations, which relate to the Named Entity:

- (1) the state of incorporation of the Named Entity; or
- (2) the state indicated in Item 1. of the Declarations page as the mailing address for the Named Entity;

or any of the following locations (regardless of whether they relate to the Named Entity):

- (3) New York, New York;
- (4) Boston, Massachusetts;
- (5) Atlanta, Georgia;
- (6) Chicago, Illinois; or
- (7) Denver, Colorado.

The Named Entity shall act on behalf of all Insureds in deciding to proceed with ADR under this clause.

**14. Liberalization Clause**

In the event that the Insurer shall announce either: (1) a new Private Company Directors and Officers and Employment Practices Insurance policy form; or (2) an

END 009

154

**ENDORSEMENT # 9 (continued)**

enhancement of coverage endorsement to this policy form, which is to be made available to all insureds and for which no additional premium is required, then the Named Entity shall have the right to such new policy or such new coverage enhancement endorsement subject to all underwriting information or particulars as the insurer may require for such new policy or enhanced coverage.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

BY SIGNING

THIS ENDORSEMENT

ENDORSEMENT # 9

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

ENDORSEMENT # 9

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

ENDORSEMENT # 9

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

ENDORSEMENT # 9

ENDORSEMENT # 9

ENDORSEMENT # 9

ENDORSEMENT # 9

*[Signature]*

**AUTHORIZED REPRESENTATIVE**

THIS ENDORSEMENT IS A PART OF THE POLICY AND IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT DOES NOT ALTER OR CHANGE THE POLICY TERMS, CONDITIONS AND EXCLUSIONS. THIS ENDORSEMENT IS SUBJECT TO THE POLICY TERMS, CONDITIONS AND EXCLUSIONS.

**END 009**

155

**ENDORSEMENT# 10**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**EXCLUSION (O) AMENDED ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that notwithstanding any other provision of this policy (including any endorsement attached hereto whether such endorsement precedes or follows this endorsement in time or sequence), Clause 4. EXCLUSIONS, is hereby amended by deleting Exclusion (o) in its entirety and replacing it with the following:


- (o) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law;

It is acknowledged that Claims for violation(s) of any of the responsibilities, obligations or duties imposed by "similar federal, state, local or foreign statutory law or common law," as such quoted language is used in the immediately preceding paragraph, include, without limitation, any and all Claims which in whole or in part allege, arise out of, are based upon, are attributable to, or are in any way related to any of the circumstances described in any of the following:

- (1) the refusal, failure or inability of any Insured(s) to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);
- (2) improper deductions from pay taken by any Insured(s) from any Employee(s) or purported employee(s); or
- (3) failure to provide or enforce legally required meal or rest break periods;

Notwithstanding the foregoing, this exclusion (o) shall not apply to the extent that a Claim is for Retaliation.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

©American International Group, Inc. All rights reserved  
**END 010**

156

**ENDORSEMENT# 11**

This endorsement, effective *12:01 a.m. February 23, 2009* forms a part of  
policy number *01-589-00-75*  
issued to *INDALEX HOLDINGS FINANCE, INC.*

by *Illinois National Insurance Company*

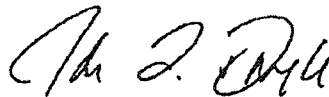
**SPECIFIC ENTITY EXCLUSION  
(CLAIMS BROUGHT BY)**

In consideration of the premium charged, it is hereby understood and agreed that the Insurer shall not be liable for any Loss in connection with any Claim(s) brought by or on behalf of the following entity(ies):

- 1. SUN CAPITAL PARTNERS (including any subsidiary or affiliate thereof)*

and/or any director, officer, partner, management committee members or members of the Board of Managers or employees thereof; or by any security holder of the entity whether directly or derivatively.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

**END 011**



157

**ENDORSEMENT# 12**

This endorsement, effective *12:01 a.m. February 23, 2009* forms a part of  
policy number *01-589-00-75*  
issued to *INDALEX HOLDINGS FINANCE, INC.*

by *Illinois National Insurance Company*

**OUTSIDE ENTITY COVERAGE  
(BLANKET NON-PROFIT)**

In consideration of the premium charged, it is hereby understood and agreed that the  
Definition of "Outside Entity" is amended by deleting subparagraph (1) in its entirety and  
replacing it with the following:

- (1) any not-for-profit organization; or

It is further understood and agreed that the following entities shall be deemed an  
"Outside Entity" with respect to its corresponding Continuity Date below:

**OUTSIDE ENTITY**

**CONTINUITY DATE**

- |  |                         |
|--|-------------------------|
| 1) a not-for-profit organization<br>under Section 501(c)(3)<br>of the Internal Revenue Code<br>of 1986 (as amended)                    | <i>February 2, 2006</i> |
| 2) any not-for-profit organization, other than an<br>organization under 501(c)(3) of the Internal<br>Revenue Code of 1986 (as amended) | <i>February 2, 2006</i> |

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**



**AUTHORIZED REPRESENTATIVE**

**END 012**

**ENDORSEMENT# 13**

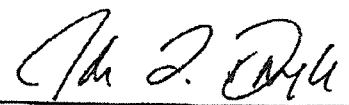
This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of  
policy number 01-589-00-75  
issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**PRIOR ACTS EXCLUSION  
(BACKDATED)**

In consideration of the premium charged, it is hereby understood and agreed that the Insurer shall not be liable to make any payment for Loss in connection with any Claim(s) for any actual or alleged Wrongful Act(s) which occurred prior to **February 2, 2006** or after the end of the Policy Period. This policy only provides coverage for Loss arising from Claim(s) for an actual or alleged Wrongful Act(s) occurring on or after **February 2, 2006** and prior to the end of the Policy Period and otherwise covered by this policy. Loss(es) arising out of the same or Related Wrongful Act(s) shall be deemed to arise from the first such same or Related Wrongful Act(s).

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

**END 013**

**ENDORSEMENT# 14**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**RUNOFF ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that as of the effective time of the "Runoff Transaction" (hereinafter "Effective Time"), this policy shall be amended as follows:

- (1) this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the Effective Time, but there shall be no coverage afforded by any provision of this policy for any actual or alleged Wrongful Act occurring after the Effective Time. This policy may not be canceled after the Effective Time and the entire premium for this policy, including this endorsement, shall be deemed earned as of such time.
- (2) The Discovery Clause of the policy is hereby deleted in its entirety and replaced with the following:

The Named Entity shall have the right to a period of six years following the Effective Time (herein referred to as the Discovery Period or Run-off Coverage) in which to give written notice to the Insurer of Claims first made against the Insureds during said six year period for any Wrongful Act occurring on or prior to the Effective Time and otherwise covered by this policy. Provided that in all events the coverage as is afforded by the Discovery Period shall be conditioned upon the Named Entity paying any additional premium due for this endorsement.

*Delete this.*

**CONDITIONS**

- (3) The Discovery Period shall be subject to all the terms and conditions of this policy. The Discovery Period shall not provide coverage for any actual or alleged Wrongful Act(s) occurring after the Effective Time.
- (4) The Limit of Liability for the Discovery Period shall be part of and not in addition to the remaining Limit of Liability of this policy as of the Effective Time. In no way shall the language of this endorsement be construed to reinstate, renew or increase the Limit of Liability for this policy or the Discovery Period.
- (5) At the Effective Time, Clause 11 of this policy (and any endorsement or amendatory amending such Clause) shall be amended to indicate that this policy may not be canceled by either the Named Entity or the Insurer, provided that the Insurer shall have the right to cancel this policy for non-payment of premium, after ten (10) day notice.
- (6) The term "Runoff Transaction" means a Transaction as defined in Clause 12.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

*[Signature]*  
AUTHORIZED REPRESENTATIVE

© American International Group, Inc. All rights reserved.

**COPY**

**END 14**

160

**ENDORSEMENT# 15**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**SUN CAPITAL AMENDATORY**

In consideration of the premium charged, it is hereby understood and agreed that the policy is hereby amended as follows:

1. **INSURING AGREEMENTS AMENDATORY** - Clause 1., "INSURING AGREEMENTS," is amended to include the following insuring agreement at the end of that Clause:

**COVERAGE C: COSTS OF INVESTIGATION FOR DERIVATIVE CLAIMS**

This policy shall pay the "Costs of Investigation of the Company arising from a Company "Shareholder Derivative" Investigation first made by the Company against one or more of its individual directors and officers during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in their respective capacities as directors and officers of the company.

2. **DEFINITIONS AMENDATORY** - Clause 2., "DEFINITIONS," is amended as follows:

2(c) "Company," Paragraphs 2(d), "Continuity Date," 2(i), "Individual Insureds," 2(n) "Outside Entity," 2(s) "Subsidiary," 2(t), "Wrongful Act," are deleted in their entirety and replaced with the following:

(c) "Company" means:

(1) the Named Entity and any Subsidiary thereof;

(2) any for-profit organization, acquired by or on behalf of Sun Capital Partners, Inc., whose securities are not publicly traded and whose assets total less than \$100,000,000 as of the inception date of this policy, herein know as a "Portfolio Company(ies)"; and

(3) any for-profit organization acquired by any Portfolio Company(ies) of the Insured's, provided, such for-profit organization(s) assets total less than 25% of the Portfolio Company's total assets.

(4) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.

(d) "Continuity Date" means:

(1) the date set forth in Item 4A of the respective Program Participant Endorsement with respect to Coverages A and B(ii); the Named Entity and any Subsidiary thereof;

161

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-76 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

(2) the date set forth in Item 4B of the respective Program Participant Endorsement with respect to Coverage B(i);

(3) the date set forth in Item 4C of the respective Program Participant Endorsement with respect to a Claim made against an Individual Insured(s) arising out of such Insured's service as a director, officer, trustee or governor of an Outside Entity; or

(4) the date set forth in Item 4C of the respective Program Participant Endorsement with respect to the Pollution Coverage afforded under Clause SC-5 of the policy, as provided for in Paragraph 17. of this endorsement

(i) "Individual Insureds" means:

(1) any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the Company, but only in their capacities as such. Coverage will automatically apply to all new directors, officers, management committee members or members of the Board of Managers of the Company after the inception date of this policy;

(2) any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the Company serving in the capacity as director, officer, trustee or governor of an Outside Entity, but only if such service is at the specific written request or direction of the Company;

(3) in the event the Company operates outside the United States, then the terms director, officer, management committee member or member of the Board of Managers shall also mean those titles, positions or capacities in such foreign Company which are equivalent to such positions in an organization incorporated or formed within the United States;

(4) any Employee(s) of the Company; and

(5) any Employed Lawyers.

(n) "Outside Entity" means:

(1) a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended);

**COPY**

**END 15**

162

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

(2) any for-profit entity in which the Company has an equity ownership interest greater than 20%.

(3) any other corporation, partnership, joint venture or other organization listed by endorsement to this policy.

(s) "Subsidiary" means:

(1) any for-profit organization which, including General Partnerships and Limited Partnerships, on or before the inception of the Policy Period, is more than 50% owned by the Named Entity, either directly, or indirectly through one or more of its Subsidiaries;

(2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than 25% of the total consolidated assets of the Company as of the inception date of this policy which becomes a Subsidiary during the Policy Period. The Named Entity shall provide the Insurer with full particulars of the new Subsidiary before the end of the Policy Period; or

(3) an organization which becomes a Subsidiary during the Policy Period (other than a for-profit organization described in paragraph (2) above), but only upon the condition that within 90 days of its becoming a Subsidiary, the Named Entity shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to such new Subsidiary.

An organization becomes a Subsidiary when the Named Entity owns more than a 50% ownership interest in such Subsidiary, either directly, or indirectly through one or more of its Subsidiaries. An organization ceases to be a Subsidiary when the Named Entity ceases to own more than a 50% ownership in such Subsidiary, either directly, or indirectly through one or more of its Subsidiaries.

In all events, coverage as is afforded under this policy with respect to a Claim made against Individual Insureds or a Claim made against any Subsidiary, shall only apply to Claims for Wrongful Acts committed or allegedly committed after the effective time that such Subsidiary became a Subsidiary and prior to the time that such Subsidiary ceased to be a Subsidiary.

163

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**(t) "Wrongful Act" means:**

1. with respect to Individual Insureds (except Employed Lawyers), any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Insureds in their respective capacities as such, or any matter claimed against such Insured solely by reason of their status as directors, officers or Employees of the Company;
2. with respect to the Company, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Company;
3. with respect to service on an Outside Entity, any matter claimed against an Individual Insured as defined in Subparagraph 2(i)(2) arising out of his or her serving as a director, officer, trustee or governor of an Outside Entity in such capacity, but only if such service is at the specific written request or direction of the Company; and
4. solely with respect to Individual Insureds as defined in Subparagraph 2(i)(5), as amended above, any act, error or omission of an Employed Lawyer(s) in the rendering or failure to render professional legal services for the Company, but solely in his or her capacity as such; provided, however, that the term "Wrongful Act" shall not mean any act, error or omission in connection with any activities by such Employed Lawyer(s): (1) which are not related to such Employed Lawyer(s) employment with the Company; (2) which are not rendered on the behalf of the Company at the Company's written request; or (3) which are performed by the Employed Lawyer(s) for others for a fee.
5. With respect to an Employment Practices Claim, the term "Wrongful Act" shall include any Employment Practices Violation.
6. With respect to Subparagraph 2(t)(3) above, in the event of a disagreement between the Company and an Individual Insured, as defined in Subparagraph 2(i)(2), as to whether such Individual Insured was acting at the specific request or direction of the Company, it is hereby understood and agreed that this policy shall abide by the determination of the

164

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

7. "Company on this issue and such determination shall be made by written notice to the Insurer within ninety (90) days after the Claim against such Individual Insured is made. In the event no determination is made within such period, this policy shall apply as if the Company determined that such Individual Insured was not acting at the Company's specific request or direction.

Paragraph 2(b), "Claim," is amended to include the following paragraph at the end thereof:

"Claim" also means, with respect to Insuring Agreement Coverage C only as provided for in Paragraph 1: of this endorsement, any Company "Shareholder" "Derivative" Investigations (subject to all the terms and conditions of this policy).

Paragraph 2(k), "Loss," is amended to include the following paragraph at the end thereof:

"Loss" also means, with respect to Insuring Agreement Coverage C only as provided for in Paragraph 1: of this endorsement, Costs of Investigations.

Clause 2., "DEFINITIONS," is amended to include the following definitions at the end of that Clause:

SC(a) "Cleanup" means to test for, monitor, clean up, remove, contain, treat, neutralize, detoxify or assess the effects of "Pollutants"; "Cleanup Costs", means expenses (and legal and professional fees) incurred in Cleanup.

SC(b) "Costs of Investigation" means reasonable and necessary costs, charges, fees and expenses (including but not limited to attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any regular or overtime wages, salaries or fees of the directors, officers, or employees of the Company) incurred by the Company (including its board of directors or any committee of the board of directors of the Company) in connection with the Company "Shareholder Derivative" Investigation.

SC(c) "Company 'Shareholder Derivative' Investigation" means the investigation by the Company against one or more of its own directors and officers after written demand by one or more shareholders of a Company ("the Complaining Shareholders") upon the board of directors or such Company to bring a civil proceeding in a court of law against any individual director or officer for a Wrongful



165

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

Act committed, attempted or allegedly committed or attempted by such director or officer before or during the Policy Period.

SC(d) "Employed Lawyer(s)" means any person admitted to practice law who is, was or becomes employed as a lawyer full time and salaried by the Company, but only as regards Wrongful Acts which occur during the term of such employment. The term "High-Tech Entity" means any organization involved in computer products including but not limited to hardware, software, semi-conductors, microprocessors, integrated circuits and other peripherals.

SC(e) "Foreign Jurisdiction" means any jurisdiction, other than the United States of America or any of its territories or possessions.

SC(f) "Foreign Policy" means the Insurer's or any other company of American International Group, Inc.'s (AIG) standard executive managerial liability policy (including all mandatory endorsements, if any) approved by AIG to be sold within a Foreign Jurisdiction that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then "Foreign Policy" means the standard policy most recently registered in the local language of the Foreign Jurisdiction, or if no such policy has been registered, then the policy most recently registered in that Foreign Jurisdiction. The term "Foreign Policy" shall not include any partnership managerial, pension trust or professional liability coverage.

SC(g) "Governmental Authority" means any federal, state or local authority, agency or body in the United States, its territories or possessions or any political subdivision thereof, other than the Securities and Exchange Commission, Commodities Futures Trading Commission or any other authority which regulates securities or commodities markets.

SC(h) "Insured Representative" means the following: Sun Capital Partners, Inc.

SC(i) "Named Entity" means each Named Entity set forth in the PROGRAM PARTICIPANTS ENDORSEMENT, whether a corporation, association, limited liability company or other type of business organization.

SC(j) "Non-Indemnifiable Loss" means Loss for which a Company has neither indemnified nor is permitted or required to indemnify an Insured Person pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a Company or by reason of financial insolvency.

SC(k) "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis and waste.

166

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

materials. "Waste materials" includes materials to be recycled, reconditioned or reclaimed.

SC(ii) "Pollution Condition" named the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants into or upon, or the presence of Pollutants in or upon land, the atmosphere or any watercourse or body of water.

**3. EXCLUSIONS AMENDATORY** - Clause 4. "EXCLUSIONS," is amended as follows:

Paragraphs 4(a), 4(b), 4(c), 4(h) and 4(i) are deleted in their entirety and replaced with the following:

(a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any judgment, final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes the Insured(s) were not legally entitled;

(b) arising out of, based upon or attributable to: (1) the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law if any judgment, final adjudication or an alternative dispute resolution proceeding establishes that such 16(b) violation occurred; or (2) the payment to any Insured(s) of any remuneration without the previous approval of the stockholders of the Company, if any judgment, final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes such payment to be illegal;

(c) arising out of, based upon or attributable to the committing of any criminal, fraudulent or dishonest act, or any willful violation of any statute, rule or law, if any judgment, final adjudication adverse to the Insured(s) or any alternative dispute resolution proceeding establishes that such criminal, fraudulent, dishonest act or willful violation of any statute, rule or law occurred;

(i) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or any other Insured under any express contract or agreement; provided, however, that this exclusion shall not apply to:

(1) the extent any liability does not arise under such express contract or agreement; or

**COPY**

**END 15**

16A

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

(2) an Individual Insured;

(i) which is brought by any Insured or by the Company; or which is brought by any security holder of the Company, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured; provided, however, this exclusion shall not apply to:

(1) any Claim brought by an Individual Insured where such Claim is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a Claim which is not otherwise excluded by the terms of this policy;

(2) an Employment Practices Claim brought by an Employee of the Company other than an Employee who is or was a director, member of the Board of Managers or management committee member of the Named Entity; or

(3) in any bankruptcy proceeding by or against a Company, any Claim brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such Company, if any;

(4) D&O's not with a Named Entity for more than 4 years;

(5) any Claim brought by or with the assistance, participation, solicitation or intervention of one Named Entity listed in the Program Participants Endorsement or by or with the assistance, participation, solicitation or intervention of a Subsidiary or Insured thereof, against a different Named Entity listed in such Program Participants Endorsement, or a Subsidiary or Insured of such different Named Entity, so long as such Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of Sun Capital Partners, Inc and/or any director, officer, partner, management committee members or members of the Board of Managers of Sun Capital Partners, Inc

(6) any Claim brought by a director, officer, management committee member or member of the Board of Managers of a Company formed and operating in a Foreign Jurisdiction against such Company or a director, officer, management committee member or member of the Board of Managers thereof, provided that such Claim is brought and maintained

168

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-76 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

- (7) outside the United States of America; Canada or any other common law country (including any territories thereof);
- (8) engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any similar state, local or foreign securities laws; shall not be deemed to trigger this exclusion.

(b) Paragraphs 4(l) is amended to include the following paragraph at the end of that Clause;

- (3) alleging, arising out of, based upon or attributable to any offering of public debt securities by the Company, an Outside Entity or an Affiliate or alleging a purchase or sale of such securities subsequent to such offering; if such public debt offering is less than or equal to \$100,000,000 in proceeds;

(c) Clause 4., "EXCLUSIONS," is amended to include the following paragraph at the end of that Clause:

Solely with respect to the coverage afforded under this endorsement for Employed Lawyers, the Insurer shall not be liable to make any payment for Loss in connection with any Claim(s) made against an Employed Lawyer(s):

SC(a) alleging, arising out of, based upon or attributable to any Wrongful Act occurring at a time when the Employed Lawyer(s) was not employed as a lawyer by the Company;

SC(b) alleging, arising out of, based upon or attributable to as of See Program Participant Endorsement, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, or alleging any Wrongful Act which is the same or Related Wrongful Act to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

SC(c) alleging, arising out of, based upon or attributable to any Wrongful Act, if as of See Program Participant Endorsement, an Employed Lawyer(s) knew or could have reasonably foreseen that such Wrongful Act could give rise to a Claim; or

169

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

SC(d) alleging, arising out of, based upon or attributable to any activities by an Employed Lawyer(s) as an officer or director of any entity, other than the Company.

Solely with respect to the Pollution Coverage afforded under Clause SC-5 of the policy, as provided for in Paragraph 17. of this endorsement, the Insurer shall not be liable to make any payment for Loss in connection with any Claims made against any Insured(s):

SC(e) arising as a result of liability of others for a Pollution Condition assumed by the Company or any Insured(s) under any contract or agreement unless such liability would attach in the absence of such contract or agreement;

SC(f) alleging, arising out of, based upon or attributable to (1) asbestos or asbestos-containing materials, or (2) acid rain conditions;

SC(g) for Cleanup of Pollutants or to recover Cleanup costs; or

SC(h) for,

any Wrongful Act occurring or Pollution Condition existing prior to the Continuity Date if, as of the Continuity Date, the Company, any Insured(s) or any employee of the Company with managerial responsibilities over environmental affairs, control or compliance, knew or could reasonably have foreseen that such Pollution Condition or Wrongful Act could give rise to any Claim(s) against the Company or any director, officer or employee thereof; or

any Pollution Condition at or originating from a site any part of which, on or before the Continuity Date, was listed on the United States Environmental Protection Agency's Comprehensive Environment Response Compensation and liability Information System ("CERCLIS") or final or proposed National Priorities List or any similar system or list maintained by a Governmental Authority.

**4. RETENTION CLAUSE:** Clause 6., "RETENTION CLAUSE," is deleted in its entirety and replaced with the following:

The Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the Retention amount stated in Item 5 of the Declarations, such Retention amount to be borne by the Company or the Insureds and shall remain uninsured, with regard to all Loss under: (1) Coverage A or B(ii) for which the Company has indemnified or is permitted or required to indemnify the Individual

170

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

Insured(s) ("Indemnifiable Loss"), or (2) Coverage B(i). A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or Related Wrongful Act.

Subject to the above paragraph, the Retention amounts stated in Item 5 of the Declarations shall apply. In the event a Claim triggers more than one amount stated in Item 5 of the Declarations, only the highest such amount shall apply, which amount shall apply to all Loss under such Claim.

The Retention amount shall be reduced in the event that an Insured consents to the first "Settlement Opportunity", as defined in Clause 8, by the percentage described in Clause 8, subject to the conditions described in Clause 8.

No Retention amount is applicable to Non-Indemnifiable Loss.

5. **SETTLEMENT CLAUSE** - Clause 8., "SETTLEMENT CLAUSE," The last paragraph of Clause 8 is deleted in its entirety and replaced with the following:

**Settlement Clause**

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then, subject to the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the applicable limit of liability, the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 70% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 30% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Company and the Insureds at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5. of the Declarations.

It is further understood and agreed that with respect to: (i) Defense Costs jointly incurred by, (ii) any joint settlement made by, and/or (iii) any judgment of joint and several liability against the Company and any Individual Insured in connection with a Claim, the Company and the Individual Insured and the Insurer agree to use their best efforts to determine a fair and proper allocation of the amounts as between the Company and the Individual Insureds and the Insurer, taking into account the relative legal and financial exposures, and the relative benefits obtained by the Individual Insureds and the Company.

**COPY**

**END 15**

171

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**6. CLAIMS NOTIFICATION CLAUSE AMENDATORY** - In Clause 7. NOTICE/CLAIM REPORTING PROVISIONS, Paragraph (a) is deleted in its entirety and replaced with the following:

(a) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after the Claim is reported to or first becomes known by any personnel in the office of the chief financial officer, the office of the general counsel, the risk management department or the human resources department (in the case of Employment Practices Claims) of the Company, but in all events a Claim must be reported no later than either:

- (1) anytime during the Policy Period or during the Discovery Period (if applicable); or
- (2) within sixty (60) days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim(s) is reported no later than sixty (60) days after the date such Claim was first made against an Insured.

**7. DISCOVERY CLAUSE** - Clause 10., "DISCOVERY CLAUSE," is deleted in its entirety and replaced with the following:

(a) Except as indicated below, if the Insureds' Representative or the Insurer shall refuse to renew this policy either in total or on behalf of a particular Named Entity(ies), then:

- (1) if the policy is nonrenewed in total, each Named Entity; or
- (2) if the policy is nonrenewed with respect to any particular Named Entity, the respective Named Entity

shall have the right to a period of either one, two or three years following the effective date of such nonrenewal upon payment of the respective "Additional Premium Amount" described below (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the relevant Named Entity(ies), including any Insureds thereof, during said Discovery Period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election

172

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

together with the Additional Premium Amount due is received by the Insurer within thirty (30) days of the effective date of nonrenewal. The Additional Premium Amount for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable.

The Additional Premium Amount for a Discovery Period under this Clause 7(a) shall only shall be: (1) 75% of the "full annual premium" for a one year Discovery Period; (2) with respect to all other Discovery Periods, a reasonable premium amount to be mutually agreed upon by the Insured and the Insurer. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period for each respective Named Entity based off the premium amount set forth in Item 6 of the applicable Program Participants Endorsement for the respective Named Entity.

(b) In the event of a Transaction, as defined in Clause 12, as of the effective time of the Transaction (hereinafter "Effective Time"), this policy shall be amended as follows: solely with respect to the Transaction Named Entity, as defined in Clause 12; and any Insured thereof:

(1) this policy shall continue in full force and effect as to Wrongful Acts of the Transaction Named Entity and any Insured thereof occurring prior to the Effective Time; but there shall be no coverage afforded by any provision of this policy for any actual or alleged Wrongful Act of the Named Entity occurring after the Effective Time. With respect to the Transaction Named Entity only, this policy may not be canceled after the Effective Time of the Transaction and the entire premium amount set forth in Item 6 of the Transaction Named Entity's Program Participants Endorsement and the Additional Premium Amount described in subparagraph 7(b)(3) below shall be deemed earned as of such time;

(2) paragraph 7(a) above is deleted in its entirety and replaced with the following:

The Transaction Named Entity shall have the right to a period of six or three years following the Effective Time (herein referred to as the "Run-Off Discovery Period") in which to give written notice to the Insurer of Claims first made against the Transaction Named Entity or any Insured thereof during said six year period for any Wrongful Act occurring on or prior to the Effective Time and otherwise covered by this policy. Provided



173

**ENDORSEMENT #15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

that in all events the coverage as is afforded by the Run-Off Discovery Period shall be conditioned upon the Insureds' Representative paying when due, on behalf of the Transaction Named Entity, the Additional Premium Amount set forth in subparagraph 7(b)(3);

(3) the Additional Premium Amount for a Run-Off Discovery Period under this Clause 7(b) only shall be: 1) 200% of the "full annual premium" set form in ITEM 7 of the Program Participants Endorsement for the six-year Run-Off Discovery Period; and 2) 150% of the "full annual premium" set form in ITEM 6 of the Program Participants Endorsement for the three year Run-Off Discovery Period (hereinafter "Run-Off Premium") less any "remaining pro-rata premium" for the Transaction Named Entity. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period for the Transaction Named Entity based off the premium amount set forth in Item 6 of the Transaction Named Entity's Program Participants Endorsement. "As used herein "remaining pro-rata premium" shall be determined by multiplying the "daily premium" by the "remaining policy period." The "daily premium" means the "full annual premium" divided by total number of days in the Policy Period for the Transaction Named Entity. The "remaining policy period" means the number of days between the date the Effective Time and the expiration date of the Policy Period for the Transaction Named Entity. The Insurer hereby agrees that if the amount of the "remaining pro-rata premium" exceeds the Runoff Premium then the Insurer shall return to the Insureds' Representative that amount of the "remaining pro-rata premium" which exceeds the Runoff Premium;

(4) the Run-Off Discovery Period shall be subject to all the terms and conditions of this policy. The Run-Off Discovery Period shall not provide coverage for any actual or alleged Wrongful Act(s) of the Transaction Named Entity or any Insured thereof occurring after the Effective Time;

(5) if Run-off is elected as discussed above in paragraph 7(b)(3) then Transaction Named Entity is entitled to a separate Limit of Liability; and

174

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

(6) at the Effective Time, Clause 11 of this policy (and any endorsement or amendatory amending such Clause) shall be amended to indicate that this policy may not be canceled, with respect to the Transaction Named Entity or any Insured thereof, by either the Insureds' Representative, the Transaction Named Entity or the Insurer, provided that the Insurer shall have the right to cancel this policy for non-payment of the premium, after ten (10) day notice.

**8. CANCELLATION CLAUSE** - Clause 11, "Cancellation Clause," is deleted and replaced with the following:

This policy may be canceled by or on the behalf of the Named Entity of the Insurer except as indicated. The Insurer can cancel only in the event of non-payment of premium by any Named Entity or the Insureds' Representative. In the event of non-payment of premium by the Named Entity or the Insureds' Representative, the Insurer may cancel this policy: (i) solely with respect to the Named Entity responsible for such non-payment; or (ii) if non-payment by the Insureds' Representative with respect to the entire policy; by delivering to the Insureds' Representative or by mailing to the Insureds' Representative, by registered, certified, or other first class mail, at the Insureds' Representative's address, written notice stating when, not less than 30 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. If any period of limitation relating to the giving of notice for cancellation due to non-payment of premium is set forth in any law controlling the construction thereof, notice of cancellation as provided above will be given in compliance with such controlling law.

**9. CHANGE IN CONTROL OF NAMED ENTITY** - Clause 12, "CHANGE IN CONTROL OF NAMED ENTITY," is deleted and replaced with the following:

If during the Policy Period:

- (a) (i) any Named Entity, or (ii) the Insureds' Representative, shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (b) any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election, appointment or designation of the directors,

175

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective **12:01 a.m. February 23, 2009**, forms a part of policy number **01-589-00-76** issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

management committee members, management board, partners (or any equivalent positions) of: (i) any Named Entity, or (ii) the Insureds' Representative, or acquires the voting rights of such an amount of such securities; or (c) the Insureds' Representative divests all of its ownership interest (debt and equity) in any Named Entity, (any of the above events herein referred to as the "Transaction"), then, with respect to (a)(i), (b)(i) or (c) for the particular Named Entity which is the subject of such Transaction,

this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction of such Named Entity, but there shall be no coverage afforded by any provision of this policy for such Named Entity or any Insureds thereof for any actual or alleged Wrongful Acts occurring after the effective time of the Transaction; and with respect to (a)(ii) and (b)(ii) above, this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged

Wrongful Acts occurring after the effective time of the Transaction. In the event of a Transaction, the applicable Named Entity(ies) shall also have the right to an offer by the Insurer of a Discovery Period described in paragraph 7(b)(2) of this endorsement. The Insureds' Representative shall give the Insurer written notice of any Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

**10. NOTICE AND AUTHORITY - Clause 15., "NOTICE AND AUTHORITY," is deleted and replaced with the following:**

It is agreed that the Insureds' Representative shall act on behalf of the Named Entities set forth in the PROGRAM PARTICIPANT ENDORSEMENT, all Subsidiaries and all Insureds with respect to the giving of notice of a Claim, the giving and receiving of notice of cancellation, the giving of any notice and full underwriting particulars under Clause 4. exclusions (j) and (k), the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a Claim to the Insurer and the exercising or declining of any right to a Discovery Period.

176

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

11. **REPRESENTATIONS AND SEVERABILITY** - Clause 19., the second paragraph of "REPRESENTATIONS AND SEVERABILITY," is hereby deleted in its entirety and replaced with the following;

The Insureds agree that in the event that such statements and representations are not accurate and complete, then this Policy shall be void *ab initio* solely with respect to any of the following Insureds:

- (1) solely with respect to Loss other than non-Indemnifiable Loss, any Individual Insured who knew as of the inception date of the Policy Period the facts that were not accurately and completely disclosed in the application,
- (2) a Company, under Clause 1. Insuring Agreements, COVERAGE B(ii), to the extent it indemnifies any Individual Insured referenced in (1) above, and
- (3) a Company, under Clause 1. Insuring Agreement, COVERAGE B(i), if any past, present or future president, chief executive officer or chief financial officer (or equivalent position) of the Named Entity knew as of the inception date of the Policy Period, the facts that were not accurately and completely disclosed in the application, whether or not such Individual Insured knew that such facts were not accurately and completely disclosed in the application.

Solely with respect to any non-Indemnifiable Loss of any Individual Insured, under no circumstances shall the coverage provided by this Policy be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of the Policy.

Further provided that for the purposes of the applicability of the coverage provided by this endorsement for non-Indemnifiable Loss, the Company will be conclusively deemed to have indemnified the Individual Insureds to the maximum extent that the Company is permitted or required to grant such indemnification pursuant to law, common or statutory, or contract or by the charter, by-laws, operating agreement or similar documents of the Company (which are hereby deemed to adopt the broadest provisions of the law which determines or defines such rights of indemnity). The Company hereby agrees to indemnify the Individual Insureds to the fullest extent permitted by law including the making in good faith of any required application for court approval. In no event shall this endorsement be construed to apply to any Claim in which the Company has indemnified or is permitted or required to indemnify the Individual Insureds.

179

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

It is understood and agreed that each Named Entity is considered separate and distinct and knowledge from one Named Entity will not be imputed to any other Named Entity.

In addition, this endorsement supercedes any inconsistent language contained in the Application.

**12: GLOBAL EXTENSION** - Clause 20, "WORLDWIDE TERRITORY," is amended to include the following paragraphs at the end of that Clause:

With regard to any Claim(s) made in Foreign Jurisdictions, and reported to the Insurer under the provisions of this policy, the Insurer shall, when requested to do so in writing by the Named Entity:

(a) undertake the investigation, settlement and defense of Claim(s) against any Insured(s); (the Insured(s) shall cooperate in the investigation and defense of such Claim(s) as may be required by the Insurer);

(b) pay covered Loss of any Insured(s):

(1) all damages and judgments arising from liability imposed upon the Insureds by reason of a final judgment under law by a court of competent jurisdiction for any alleged Wrongful Acts to which this insurance applies;

(2) all Defense Costs arising from any Claim(s) to which this Clause applies; and

(3) all sums for settlements negotiated by the Insurer with the approval of the Company and the Insured(s), provided that if the Company or the Insured(s) refuse to consent to a settlement recommended by the Insurer, the Insurer's obligation and liability for defense under Paragraph (a) above shall terminate and the Insurer's liability for payment under this Paragraph (b) shall not exceed the amount of the settlement recommended and the expenses under Subparagraph (b)(2) above as of the time of refusal to consent.

The amounts due under Subparagraphs (b)(1), (b)(2), and (b)(3) above shall be included in, and not in addition to, the Limit of Liability set forth on the Declaration page of this policy and shall be subject to the applicable Retention(s).

It is further understood and agreed that the Insurer shall not be held responsible for any delay or failure to perform its obligation hereunder due to national, federal state or municipal action or regulation; strikes or other labor troubles; acts of God, war, riot, insurrection or mutiny; or any other causes, contingencies, or circumstances outside the United States not subject to the Insurer's control which make the

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-689-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

fulfillment of this Clause impracticable; any of which shall, without liability, excuse the insurer from the obligations set forth in this Clause.

**13. GLOBAL LIBERALIZATION** - The policy is amended to include the following Clause at the end thereof:

**SC-1. GLOBAL LIBERALIZATION**

In the event that a Claim(s) is brought and maintained solely in a Foreign Jurisdiction against a Company formed and operating in such Foreign Jurisdiction or an Individual Insured(s) thereof for Wrongful Acts committed in such Foreign Jurisdiction, the Insurer shall apply to such Claim(s) those terms and conditions (and related provisions) of the Foreign Policy registered with the appropriate regulatory body in such Foreign Jurisdiction that are more favorable to such Insured(s) than the terms and conditions of this policy. However, this paragraph shall apply only to Clauses 1-4, 9-13, 15, 16 and 18 of this policy and the comparable provisions of the Foreign Policy. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of any policy.

All premiums, limits, retentions, Loss and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of Loss are stated or incurred in a currency other than United States of America dollars, payment of covered Loss due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the Insurer and if agreeable to the Named Entity) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such Loss is established (or if not published on such date the next publication date of The Wall Street Journal).

**14. ORDER OF PAYMENTS** The policy is amended to include the following Clause at the end thereof:

**SC-2. ORDER OF PAYMENTS**

(a) In the event of Loss arising from any Claim(s) for which payment is due under the provisions of this policy but which Loss, in the aggregate, exceeds the remaining available Limit of Liability of this policy, then this policy shall:

179

**ENDORSEMENT #15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-76 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

first pay such Loss for which coverage is provided under Coverage A of the policy, then with respect to whatever remaining amount of the Limit of Liability is available after payment of such Loss, then pay such Loss for which coverage is provided by Coverage B of the policy.

In the event of Loss arising from a Claim(s) for which payment is due under the provisions of this policy (including those circumstances described in Paragraph SC-2(a) of this Clause), the Insurer shall at the written request of the Named Entity:

first pay such Loss for which coverage is provided under Coverage A of the policy, then

either pay or hold payment for such Loss for which coverage is provided by Coverage B of the policy.

In the event that the Insurer withholds payment under Coverage B of the policy pursuant to Paragraph SC-2(b) above, then the Insurer shall at any time in the future, at the request of the Named Entity, release such Loss payment to the Company, or make such Loss payment directly to an individual director or officer in the event of covered Loss under any Claim(s) covered under this policy pursuant to Coverage A of the policy.

Nothing in this Clause shall be construed to increase the Limit of Liability of the Insurer under this policy which such Limit of Liability shall remain the maximum liability of the Insurer under all Claims under all Coverage under this policy combined.

**15. EMPLOYED LAWYER PROFESSIONAL LIABILITY EXTENSION COVERAGE**

**PROVISIONS** - With respect to the coverage afforded under this endorsement for Employed Lawyers, the policy is amended to include the following Clause at the end thereof:

**SC-3. EMPLOYED LAWYER COVERAGE PROVISIONS**

Clause 5., "LIMIT OF LIABILITY and REINSTATED LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)," is amended to include the following paragraph at the end of that Clause:

The limit of the Insurer's liability for all Loss arising from coverage afforded under this endorsement for Employed Lawyers, in the aggregate, shall be \$1,000,000 (hereinafter the "Employed Lawyer sublimit of liability"). This

180

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

The limit shall be the maximum limit of the Insurer under this policy regardless of the number of such Claims occurring during the Policy Period or the Discovery Period (if applicable); provided, however, that the Employed Lawyer sublimit of liability shall be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations, "LIMIT OF LIABILITY," which shall in all events be the maximum liability of the Insurer for all Loss under this policy.

With respect to coverage afforded under this endorsement for Employed Lawyers, it is further understood and agreed that:

the Company will be conclusively deemed to have indemnified the Employed Lawyer(s) to the extent that the Company is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the Company. The Company hereby agrees to indemnify the Employed Lawyer(s) to the fullest extent permitted by law, including the making in good faith of any required application for court approval;

coverage as is afforded under this endorsement shall apply to a Wrongful Act(s) only if one or more Insured(s) (other than an Employed Lawyer(s)) are and remain co-defendants in the action along with an Employed Lawyer(s);

coverage as is afforded under this endorsement is specifically excess over any other valid or collectible lawyers' professional insurance, legal malpractice or errors and omissions insurance and shall only drop down and be primary insurance in the event of exhaustion of such other insurance due to losses paid thereunder.

**16. COSTS OF INVESTIGATION COVERAGE FOR COMPANY "SHAREHOLDER DERIVATIVE" INVESTIGATIONS AGAINST DIRECTORS AND OFFICERS COVERAGE PROVISIONS** - With respect to the coverage afforded under Insuring Agreement Coverage C, as provided for in Paragraph 1. of this endorsement, the policy is amended to include the following Clause at the end thereof:

**SC-4. COST OF INVESTIGATION COVERAGE PROVISIONS**

Clause 5., "LIMIT OF LIABILITY and REINSTATED LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)," is amended to include the following paragraph at the end of that Clause:

The limit of the Insurer's liability for Costs of Investigation arising from all Company "Shareholder Derivative" Investigations occurring during the Policy Period or the Discovery Period (if applicable), in the aggregate, shall be



181

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective **12:01 a.m. February 23, 2009** forms a part of policy number **01-589-00-75** issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

... **\$250,000**. This limit shall be the maximum limit of the Insurer under this policy regardless of the number of such Claims occurring during the Policy Period or the Discovery Period (if applicable); provided, however, that the Costs of Investigation limit shall be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations, "LIMIT OF LIABILITY," which shall in all events be the maximum liability of the Insurer for all Loss under this policy.

(b) There shall be no Retention amount applicable to Costs of Investigation, and the Insurer shall pay such Loss from first dollar subject to the other terms and conditions of this endorsement.

(c) It shall be the duty of the Company and not the duty of the Insurer to conduct, investigate and evaluate any Company "Shareholder Derivative" Investigation(s) against its own individual directors and officers, provided that the Insurer shall be entitled to effectively associate in the investigation and evaluation, and the negotiation of any settlement, of any such Company "Shareholder Derivative" Investigation.

Clause 4. EXCLUSIONS is applicable to Costs of Investigation.

Nothing in this endorsement shall be construed to afford coverage under this policy for any Claim brought by the Company against one or more of its own directors and officers, other than Costs of Investigation incurred in a covered Company "Shareholder Derivative" Investigation.

**PAYMENT PROCEDURES FOR COSTS OF INVESTIGATIONS**

With respect to the coverage afforded under Insuring Agreement Coverage C, as provided for in Paragraph 1. of this endorsement, the Company shall be entitled to payment under this endorsement as reimbursement of its covered Costs of Investigation ninety (90) days after a final decision by the Company, as a result of the Company "Shareholder Derivative" Investigation, not to bring a civil proceeding in a court of law against any individual director or officer has been communicated to the Complaining Shareholders. Provided further that such payment shall be subject to an undertaking by the Company in a form acceptable to the Insurer that such reimbursement shall be paid back by the Company to the Insurer in the event the Company or the Complaining Shareholders bring a Claim before the expiration of the statute of limitations for such Claim, against the directors and officers alleging a Wrongful Act or underlying fact or circumstance the subject of which was part of the Company "Shareholder Derivative" Investigation.

182

**ENDORSEMENT# 15 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**17. POLLUTION (SIDE A ONLY) COVERAGE PROVISIONS** - With respect to the Pollution Coverage afforded under the policy, the policy is amended to include the following:

**SC-5. POLLUTION COVERAGE PROVISIONS**

As respects any Claim(s) under Coverage A of this policy only, the exclusion in Paragraph 4(n) of the policy shall not apply to any non-Indemnifiable Claim(s) made against an Individual Insured, but only if such Claim(s) is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured(s) or the Company, or any subsidiary or affiliate of the Company.

(b) As concerns the applicability of Paragraph PE-5(a) above, the Company will be conclusively deemed to have indemnified the directors or officers to the extent that the Company is permitted or required to grant such indemnification pursuant to law, common or statutory, or contract or the charter or by-laws of the Company (which are hereby deemed to adopt the broadest provisions of the law which determines or defines such rights of indemnity). The Company hereby agrees to indemnify the directors or officers to the fullest extent permitted by law including the making in good faith of any required application for court approval. In no event shall this Clause be construed to apply to any Claim in which the Company has indemnified or is permitted or required to indemnify the Insureds.

**18. SPECIFIC ENTITY EXCLUSION** - With respect to the coverage afforded under this endorsement, the policy is amended to include the following Clause:

**SC-6. SPECIFIC ENTITY EXCLUSION**

It is hereby understood and agreed that the Insurer shall not be liable for any Loss in connection with any Claim(s) made against the Directors or Officers which are brought by or on behalf of:

- 1. Sun Capital Partners, Inc (including any subsidiary)

or any director, officer, partner or employee thereof; whether directly or derivatively, unless such Claim(s) is instigated and continued totally independent of, or without the intervention of the entity listed above or any director, officer or partner or employee thereof.

**ENDORSEMENT # 15 (Continued)**

This endorsement, effective **12:01 a.m. February 23, 2009** forms a part of policy number **01-589-00-75** issued to **INDALEX HOLDINGS FINANCE, INC.**

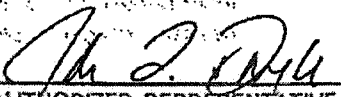
by **Illinois National Insurance Company**

**19. STATE INCONSISTENCY AMENDATORY - With respect to the coverage afforded under this endorsement, the policy is amended to include the following Clause:**

**SC-7. STATE INCONSISTENCY AMENDATORY**

It is hereby understood and agreed that in the event that there is an inconsistency between a state amendatory attached to this policy and any term or condition of this policy, then it is understood and agreed that, where permitted by law, the Insurer shall apply those terms and conditions of either the amendatory or the policy which are more favorable to the Insured.

**ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.**

  
**AUTHORIZED REPRESENTATIVE**

184

**ENDORSEMENT # 16**

This endorsement, effective 12:01 a.m. February 23, 2009 forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**SUN CAPITAL CO-DEFENDANT COVERAGE  
(ENTITY CO-DEFENDANT ONLY)**

In consideration of the premium charged, it is hereby understood and agreed that, notwithstanding any other provision of this policy (including any endorsement attached hereto whether such endorsement precedes or follows this endorsement in time or sequence), this policy is hereby amended as follows for the below listed entities:

Entities:

- 1. Sun Capital Partners, Inc

**I.**

**INSURING AGREEMENTS**

The Section of the policy entitled **INSURING AGREEMENTS** is amended by deleting Coverage B, Private Company Insurance, in its entirety and replacing it with the following:

**COVERAGE B: PRIVATE COMPANY INSURANCE**

This policy shall pay the Loss of the Entity arising from a:

- (i) Claim first made against the Entity, however solely with respect to an Employment Practices Claim, only so long as such Employment Practices Claim is also made and continuously maintained against at least one Individual Insured of the Entity; or

- (ii) Claim first made against an Individual Insured,

during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act, but, in the case of (ii) above, only when and to the extent that the Entity has indemnified the Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the charter or by-laws of the Entity duly effective under such law which determines and defines such rights of indemnity. The Insurer shall, in accordance with and subject to Clause 9, advance Defense Costs of such Claim prior to its final disposition.

185

**ENDORSEMENT #16 (Continued)**

This endorsement, effective 12:01 a.m. February 23, 2009, forms a part of policy number 01-589-00-75 issued to **INDALEX HOLDINGS FINANCE, INC.**

by **Illinois National Insurance Company**

**II.**

**DEFINITIONS**

The Section of the policy entitled DEFINITIONS is amended as follows:

Definition (j) "Insured(s)" is deleted in its entirety and replaced with the following:

(j) "Insured(s)" means:

- (1) an Individual Insured; and
- (2) the Entity, however with respect to Employment Practices Claim(s) only, the Entity is an Insured only to the extent described in Insuring Agreement Coverage B(i) of the policy.

**III.**

**EXCLUSIONS**

Clause 4. Exclusion (q) is deleted in its entirety and replaced with the following:

(q) with respect to Coverage B(i) only:

- (1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
- (2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
- (3) for the rendering or failure to render any service to a customer or client of the Insured provided, however, that this exclusion shall not apply to any:

- (i) Claim solely alleging Employment Practices Violations, but only so long as such Employment Practices Claim is also made and continuously maintained against at least one Individual Insured of the Entity;
- (ii) Securities Claim; or

186

**ENDORSEMENT# 16 (Continued)**

This endorsement, effective *12:01 a.m. February 23, 2009* forms a part of  
policy number *01-589-00-76*  
issued to *INDALEX HOLDINGS FINANCE, INC.*

by *Illinois National Insurance Company*

- (iii) Claim for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this policy by written endorsement attached hereto;
- (4) seeking fines or penalties or non-monetary relief against the Entity; provided, however, that this exclusion shall not apply to any Securities Claim or Employment Practices Claim as otherwise covered under this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

187

**ENDORSEMENT# 17**

This endorsement, effective 12:01 a.m. February 23, 2009  
policy number 01-589-00-75  
issued to **INDALEX HOLDINGS FINANCE, INC.**

forms a part of

by **Illinois National Insurance Company**

**FORMS INDEX ENDORSEMENT**

The contents of the Policy is comprised of the following forms:

FORM NUMBER	EDITION DATE	FORM TITLE
68461	08/97	PRIVATE EDGE ADMITTED DEC
68462	08/97	PRIVATE EDGE ADMITTED POLICY PAGES
	06/08	SECURITIES CLAIM PANEL COUNSEL LIST
	06/08	EMPLOYMENT PRACTICES CLAIM PANEL COUNSEL
52142	01/93	ILLINOIS AMENDATORY - CANCELLATION/NONRENEWAL
78208	07/01	IL AMENDATORY
89644	07/05	COVERAGE TERRITORY ENDORSEMENT (OFAC)
99758	08/08	NOTICE OF CLAIM (REPORTING BY E-MAIL)
82462	06/03	CAPTIVE INSURANCE COMPANY
82543	06/03	COMMISSIONS EXCLUSION
82545	06/03	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
91311	08/06	PRIVATEEDGE AMENDATORY ENDORSEMENT
82487	06/03	LEADERS PREFERRED ENDORSEMENT PRIVATE EDGE
86885	03/08	EXCLUSION (D) AMENDED (FLSA)
82518	06/03	SPECIFIC ENTITY EXCLUSION (CLAIMS BROUGHT BY)
82493	06/03	OUTSIDE ENTITY COVERAGE (BLANKET NON-PROFIT)
82502	06/03	PRIOR ACTS EXCLUSION (BACKDATED)
		RUNOFF ENDORSEMENT
		SUN CAPITAL AMENDATORY
		SUN CAPITAL CO-DEFENDANT COVERAGE
78859	10/01	FORMS INDEX ENDORSEMENT

**END 017**

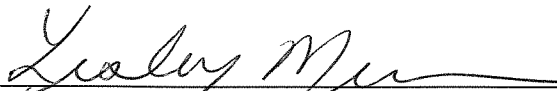




# TAB Q

**THIS IS EXHIBIT "Q"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
A Commissioner for Taking Affidavits

190

RECEIVED  
AUG 18 2009

Filmy for  
both regular  
proof &  
D&O  
P.D.

Annexe « 5 »

PREUVE DE RÉCLAMATION D&O C

CONCERNANT LES RÉCLAMATIONS CONTRE  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. ET NOVAR INC.  
(collectivement, les « demandeurs »)

et

LES DIRECTEURS ET OFFICIERS ACTUELS ET ANCIENS DES DEMANDEURS  
(collectivement, les « Directeurs et Officiers »)

DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS  
DES COMPAGNIES,

L.R.C. 1985, c., C-36, telle que modifiée

A. DÉTAILS DU CRÉANCIER D&O

1. Dénomination sociale complète du créancier D&O: Revenu Québec  
(le « Créancier »).  
*(La dénomination sociale complète doit être le nom du créancier d'origine : Ne pas présenter de preuves de réclamation séparées par division du même créancier.)*
2. Adresse postale complète du créancier :  
1600, René-Lévesque Ouest  
3<sup>e</sup> Étage R23LPF  
Montréal Québec H3H 2V2
3. Numéro de téléphone du créancier : 514 415-5256 1

<sup>1</sup> AFIN DE S'ASSURER QUE TOUTES LES RÉCLAMATIONS SOIENT TRAITÉES DE MANIÈRE ACCÉLÉRÉE, VOUS DEVEZ FOURNIR UN (1) OU PLUSIEURS NUMÉRO(S) DE TÉLÉPHONE, NUMÉRO DE TÉLÉCOPIEUR OU ADRESSE ÉLECTRONIQUE.

191

4. Numéro de télécopieur du créancier : 514 285-3833 Error  
Bookmark not defined.

5. À l'attention de (Personne-ressource) : Josée Robillard Error  
Bookmark not defined.

6. Adresse électronique : \_\_\_\_\_ Error  
Bookmark not defined.

7. La créance a-t-elle été vendue ou assignée par un créancier à une autre partie?  
Oui \_\_\_\_\_ Non  (Si oui, veuillez remplir la section D)

**B. PREUVE DE RÉCLAMATION D&O**

Je soussigné, Josée Robillard [Nom du créancier ou du de représentant du créancier], certifie par les présentes :

A) que je suis (veuillez cocher une) :

\_\_\_\_\_ le créancier; ou

détiens le poste suivant de agente de gestion financière du créancier

et j'ai une connaissance directe de toutes les circonstances connectées à la réclamation D&O décrite aux présentes;

B) Le créancier est exigible comme suit :

Créance D&O garantie \_\_\_\_\_ \$ CAN sur une base garantie,  
j'ai estimé ma garantie à \_\_\_\_\_ \$ (ceci sera le montant auquel vous estimez votre créance garantie, la différence entre le montant de la créance garantie et la valeur de votre sécurité sera le montant de votre créance ordinaire)

Créance D&O ordinaire 398 958.08 \$ CAN sur une base ordinaire

*Remarque : Les créances dans une devise étrangère doivent être converties en dollars canadiens au taux de change de la Banque du Canada à la date de dépôt de la demande, le 3 avril 2009. Par exemple, le taux de change du dollar américain au dollar canadien à une telle date était de 1 \$USD = 0,8056 \$ CAN).*

**C. DÉTAILS DE LA RÉCLAMATION D&O :**

Nom du directeur et montant pour chaque directeur qui doit le montant réclamé :

Directeur	Garantie	Ordinaire
David J. Mc Callen	- \$	<u>398 958.08</u>
TIM Stubbs	- \$	<u>398 958.08</u>

192

Patrick Lawlor \_\_\_\_\_ \$ 398 958.08\$  
 \_\_\_\_\_ \$ \_\_\_\_\_ \$

Description de la transaction, de l'accord ou de l'événement causant ou lié à la réclamation D&O :  
remises de TVA pour périodes 2009-01, 2009-02 et 2009-03  
en vertu de l'article 24.0.1 de la Loi sur le ministère du  
Revenu.

Si la réclamation D&O est éventuelle ou non liquidée, énoncez-en la base et fournissez la preuve sur laquelle la réclamation D&O a été évaluée :

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Description de la garantie, le cas échéant, attribuée au créancier ou assignée par le créancier concernant la réclamation D&O :

\_\_\_\_\_  
 \_\_\_\_\_

Valeur estimative de la garantie soulignée ci-dessus en date de la réclamation D&O :

\_\_\_\_\_

**SI LES DEMANDEURS ONT BESOIN DE L'ESPACE SUPPLÉMENTAIRE FOURNI AUX PRÉSENTES, VEUILLEZ JOINDRE UNE ANNEXE À CE DOCUMENT. LES DEMANDEURS DOIVENT ÉGALEMENT FOURNIR DES COPIES DE TOUS LES ACCORDS PERTINENTS**

UN RELEVÉ DE COMPTE DÉTAILLÉ DOIT ÊTRE JOINT À LA PREUVE DE RÉCLAMATION D&O, INDIQUANT LA DATE, LE NUMÉRO ET LE MONTANT DE CHAQUE FACTURE OU CHARGE, AINSI QUE LA DATE, LE NUMÉRO ET LE MONTANT DE TOUS LES CRÉDITS, LES DEMANDES RECONVENTIONNELLES, LES RABAIS, LES PAIEMENTS, ETC., AUXQUELS LES DEMANDEURS ONT DROIT.

**D. DÉTAILS DU(DES) CESSIONNAIRE(S) (LE CAS ÉCHÉANT) :**

- Nom complet du(des) cessionnaire(s) de la réclamation D&O (si le nom au complet ou une partie du nom a été vendu). S'il y a plus d'un cessionnaire, veuillez joindre des feuilles séparées contenant les renseignements suivants :

le(s) « cessionnaire(s) » \_\_\_\_\_  
 Montant de la réclamation D&O totale assignée \$ \_\_\_\_\_  
 Montant de la réclamation D&O totale non assignée \$ \_\_\_\_\_  
 Montant total de la réclamation D&O \$ \_\_\_\_\_

193

(doit être égal à « Réclamation totale D&O » tel qu'entrée dans la section B)

2. Adresse postale complète du(des) cessionnaire(s) :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Numéro de téléphone du(des) cessionnaire(s) :

\_\_\_\_\_

4. Numéro de télécopieur du(des) cessionnaire(s) :

\_\_\_\_\_

5. Adresse électronique du(des) cessionnaires :

\_\_\_\_\_

6. À l'attention de (Personne-ressource) :

\_\_\_\_\_

**E. DÉPÔT DE RÉCLAMATIONS D&O :**

La preuve de réclamation D&O dûment remplie ainsi que les documents pertinents doivent être retournés et reçus par le Contrôleur, au plus tard à 17 h (heure avancée de l'Est) le 28 août, 2009, à l'adresse ou au numéro de télécopieur suivant(e) :

À défaut de produire votre preuve de réclamation D&O au plus tard à une telle date, votre réclamation cessera d'être en vigueur et sera prescrite pour toujours et il vous sera interdit de présenter ou d'exécuter une réclamation D&O contre les demandeurs.

Cette preuve de réclamation D&O doit être livrée par courriel, télécopieur, livraison personnelle, messagerie ou courrier affranchi à l'adresse suivante:

Adresse du contrôleur :

Indalex Limited et/ou  
Indalex Holdings (B.C.) Ltd. et/ou  
6326765 Canada Inc. et/ou  
Novar Inc.  
a/s de FTI Consulting Canada ULC,  
Tour TD Canada Trust  
161 Bay Street, 27<sup>e</sup> étage  
Toronto, Ontario M5J 2S1

À l'attention de : Mme Rachel Gillespie

Téléphone : (416)-572-2476

Télécopieur : (416)-572-4068

Adresse électronique : rachel.gillespie@fticonsulting.com

FAIT À Montréal ce 18<sup>e</sup> jour de août, 2009.

Mario Léonard  
(Signature du témoin)

Mario Léonard  
(Inscrire en caractères d'imprimerie)

Josee Robillard  
(Signature de la personne remplissant le

Josee Robillard  
(Inscrire en caractères d'imprimerie)



195

Revenu

**Québec**

Direction générale du centre de perception fiscale  
et des biens non réclamés

## Bordereau de télécopie

Date : 2009-08-18

Nombre total de page : X10

Destinataire Nom : Rachel Gillespie Organisme : FTI Consulting Canada ULC

Adresse :

Téléphone : 416 572-2476

Télécopieur : 416 572-4068

Expéditeur Nom : Josée Robillard Unité administrative :

Direction générale du centre de perception fiscale  
et des biens non réclamés  
1600, boul. René-Lévesque Ouest, 3e étage  
secteur R23CPF  
Montréal (Québec) H3H 2V2

Téléphone : 514 415-5256 ou 1 866-418-3527 5256

Télécopieur : 514 285-3833

Message :

Dossier de Indalex Limited Ref.: 4265162

Vous trouverez ci-joint notre preuve de créance ainsi que notre preuve de réclamation D&O.

Les originaux suivront par la poste.

Merci et bonne journée

  
Josée Robillard

**Avis relatif aux renseignements confidentiels**

Les renseignements contenus dans les présentes sont confidentiels en vertu de la *Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels*, de la *Loi sur le ministère du Revenu* et de la *Loi facilitant le paiement des pensions alimentaires*. Ils ne peuvent être utilisés que par le ou la destinataire dont le nom apparaît ci-dessus.

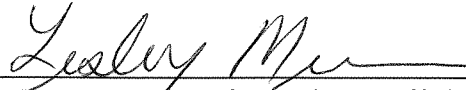
Si ce message vous est parvenu par erreur et que vous n'êtes pas le destinataire visé, vous êtes, par les présentes, avisé que tout usage (copie, distribution ou autre) de ce message est strictement interdit. Vous êtes donc prié de nous aviser immédiatement de cette erreur en communiquant avec l'expéditeur, et nous retourner l'original de ce message à l'adresse indiquée ci-dessus. Merci.



# TAB R

**THIS IS EXHIBIT "R"**

*referred to in the Affidavit of Kaitlin  
Brown sworn before me this 13<sup>th</sup> day of  
October, 2010.*

  
\_\_\_\_\_

*A Commissioner for Taking Affidavits*

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

- 1. Full Legal Name of D&O Creditor: United Steelworkers (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
- 2. Full Mailing Address of the Creditor:  
c/o Sack Goldblatt Mitchell LLP  
20 Dundas St. W., Suite 1100  
Toronto, Ontario M5G 2G8
- 3. Telephone Number of Creditor: 416 979 4050 <sup>1</sup>
- 4. Facsimile Number of Creditor: 416 591 7333 Error! Bookmark not defined.
- 5. Attention (Contact Person): Darrell Brown Error! Bookmark not defined.

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

6. Email address: dbrown@sgmlaw.com Error! Bookmark not defined.

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes \_\_\_ No X (If yes please complete section D)

**B. PROOF OF D&O CLAIM:**

I, Darrell Brown [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

\_\_\_ the Creditor; or  
X hold the following position of legal counsel of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

B) The Creditor is owed as follows:

**Secured D&O Claim** \$ 0.00 Cdn on a secured basis,  
I have valued my security at \$ 0.00 (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

**Unsecured D&O Claim** \$1,795,600.00 Cdn on an unsecured basis plus interest

*Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).*

**C. PARTICULARS OF D&O CLAIM:**

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input type="checkbox"/> Tim Stubbs	\$ <u>0.00</u>	\$* <u>see below</u>
<input type="checkbox"/> Patrick Lawlor	\$ <u>0.00</u>	\$* <u>see below</u>
<input type="checkbox"/> David McCallen	\$ <u>0.00</u>	\$* <u>see below</u>
<input type="checkbox"/> Keith Cooper	\$ <u>0.00</u>	\$* <u>see below</u>

\* Tim Stubbs, Patrick Lawlor, David McCallen & Keith Cooper owe \$1,795,600.00 plus interest, jointly and severally.  
Description of transaction, agreement or event giving rise or relating to the D&O Claim:

The named directors above have exercised their powers and conducted the affairs of the Applicants in a way that was oppressive and unfairly disregarded the interests of the Creditor, contrary to the Canada Business Corporations Act, R.S.C. 1985, c. C-44. The directors caused or permitted deficiencies in

the Applicants' contributions to the Retirement Plan for Salaried Employees of Indalex and Associated Companies in the amount of \$1,795,600.00.

\_\_\_\_\_  
If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:  
Not applicable.  
\_\_\_\_\_  
\_\_\_\_\_

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the D&O Claim:  
Not applicable.  
\_\_\_\_\_  
\_\_\_\_\_

Estimated value of security outlined above as at the date of the D&O Claim:  
Not applicable.  
\_\_\_\_\_

***IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS***

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF D&O CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

- 1. Full Legal Name of Assignee(s) of D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_  
(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ \_\_\_\_\_  
Amount of Total D&O Claim Not Assigned \$ \_\_\_\_\_  
  
Total Amount of D&O Claim \$ \_\_\_\_\_  
(should equal "Total D&O Claim" as entered on Section B)

- 2. Full Mailing Address of Assignee(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

200

- 3. Telephone Number of Assignee(s): \_\_\_\_\_
- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

**The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:**

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

**Address of Monitor:**

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at Toronto this 29<sup>th</sup> day of September, 2009. 10. DB

Collen Weis  
\_\_\_\_\_  
(Signature of Witness)

Darrell Brown  
\_\_\_\_\_  
(Signature of individual completing this form)

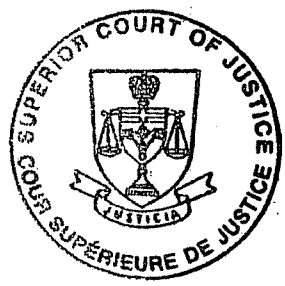
COLLEN WEIS  
\_\_\_\_\_  
(Please print name)

DARRELL BROWN  
\_\_\_\_\_  
(Please print name)

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) TUESDAY, THE  
 )  
JUSTICE MORAWETZ ) 12<sup>th</sup> DAY OF MAY, 2009



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")

**AMENDED AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

WHEREAS AN INITIAL ORDER in this matter was issued on April 3, 2009, which order was subsequently amended and restated by an order dated April 8, 2009, and such order is hereby further amended and restated.

ON READING the affidavit of Timothy R.J. Stubbs sworn April 3, 2009 and the Exhibits thereto, the supplemental affidavit of Patrick Lawlor sworn April 8, 2009 and the Exhibits thereto, (the "Supplemental Affidavit"), the affidavit of Michelle Schwartzberg sworn May 6, 2009 and the Exhibits thereto, the pre-filing report of FTI Consulting Canada ULC ("FTI Canada" or the "Monitor") in its capacity as proposed Monitor and the First Report of the Monitor for the Applicants, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for the DIP Agent, JPMorgan Chase Bank, N.A. ("JPM")



under the Prepetition Credit Agreement (in such capacity, the "Prepetition Agent") and as administrative agent for the proposed DIP Lenders (in such capacity, the "DIP Agent"), and on reading the consent of FTI Canada to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement with respect to one or more of the Applicants (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants are authorized and directed to remit to the DIP Agent immediately upon the Applicants' receipt thereof or otherwise in accordance with the Applicants' current practices all cash, monies and collection of account receivables and other book debts (collectively, "Cash Collateral") in its possession or control and all Cash Collateral so remitted shall be applied in accordance with the DIP Documents. The DIP Agent is hereby authorized, as of the Effective Date (as defined in the DIP Credit Agreement, as defined below), to (i) send a notice to each Receivables Account Bank (as defined in the Canadian Security Agreement referred to in the DIP Credit Agreement) to commence a period during which the applicable Receivables Account Bank shall cease complying with any instructions originated by any applicable Applicant and shall comply with instructions originated by the DIP Agent directing dispositions of funds, without further consent of the applicable Applicant, and (ii) apply (and allocate) the funds in each Receivables Account (as defined in the Canadian Security Agreement referred to in the DIP Credit Agreement) pursuant to sections 2.09(d) of the DIP Credit Agreement without further order or approval of this Court. Each Receivables Account Bank is hereby authorized to comply with any instructions originated by the DIP Agent on or after the Effective Date directing disposition of funds, without further consent of the applicable Applicant or further order or approval of this Court, and is further authorized to comply with any instructions delivered by the DIP Agent or JPM in its capacity as Prepetition Agent under that certain Credit Agreement among, *inter alia*, the Applicants, dated May 21, 2008 as amended from time to time (the "Prepetition Credit Agreement") to such Receivables Account Bank prior to the Effective Date directing disposition of funds, without further consent of the applicable Applicant or further order or approval of this Court. As of the Effective Date, each "Deposit Account Control Agreement" and "Receivables Account Control Agreement" (as each such term is defined in the Domestic Security Agreement or the Canadian Security Agreement referred to in the Prepetition Credit Agreement) will continue and remain in full force and effect, in each case substituting the Prepetition Agent as the secured party thereunder with the DIP Agent. The Applicants shall maintain their cash management and accounts receivable collection system (the "Cash Management System") in existence prior to the date of this Order, including the Collateral Accounts (as defined below) associated therewith. Each Receivable Account Bank shall not be under any obligation whatsoever to inquire into the propriety validity, or legality of any transfer, payment, collection, or other action taken under this paragraph, or as to the use or application by

the Applicants of funds transferred, paid, collected, or otherwise dealt with in accordance with this paragraph, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of this paragraph or any documentation applicable to the Cash Management System, and shall be, in its capacity as a Receivable Account Bank, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. [RESERVED]

7. THIS COURT ORDERS that subject to the terms of the DIP Documents (as defined below), the Applicants shall be entitled to but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages and salaries (for greater certainty wages and salaries shall not include severance or termination pay), employee and pension benefits, current service contributions to pension plans (which for greater certainty shall not include special payments) vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and pursuant to the terms and conditions of the DIP Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

- (b) payment for goods or services actually supplied to the Applicants following the date of this Order; and
- (c) with the consent of the Monitor, in consultation with the DIP Lenders or their financial advisors, costs and expenses incurred prior to the date of this Order, up to the maximum amount approved by the DIP Lenders pursuant to the DIP Credit Agreement, where in the opinion of the Applicants and the Monitor such payments (i) are necessary to preserve the Property, Business and/or ongoing operations of the Applicants and (ii) can be made on such terms and conditions as will provide a material benefit to the Applicants and their stakeholders as a whole.

9. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) current service ("normal cost") contributions to pension plans when due (which, for greater certainty, shall not include special payments);
- (c) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. THIS COURT ORDERS that until such time as an Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 12(c) of this Order (a "Notice of Repudiation"), the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicant shall pay all Rent due for the notice period stipulated in paragraph 12(c) of this Order, to the extent that Rent for such period has not already been paid.

11. THIS COURT ORDERS that, except as specifically permitted herein and the DIP Documents or with the consent of the Monitor and the DIP Agent, the Applicants are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; provided, however, that the Applicants shall make all such payments under the Prepetition Credit Agreement as required pursuant to the terms of the DIP Documents and contemplated in the Applicants' cash flow projections and budget approved by the DIP Agent;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

12. THIS COURT ORDERS that the Applicants shall, subject to such covenants as may be contained in the DIP Documents (as hereinafter defined), have the right to:

- (a) with the consent of the Monitor and the DIP Agent, permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate, subject to paragraph 12(c) if applicable;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 13 and 14, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, other than collective agreements, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

13. THIS COURT ORDERS that each Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 12(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 12(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

15. THIS COURT ORDERS that until and including May 1, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written

consent of the applicable Applicant, the Monitor and the DIP Agent, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the relevant Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, employee benefits, transportation, services, utility or other services to the Business or an Applicant (including, where a notice of termination may have been given with an effective date after the date of this Order), are hereby restrained until further Order of this Court from discontinuing, altering,



interfering with or terminating the supply of such goods or services as may be required by an Applicant, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of an Applicant with respect to any claim against the directors or officers that arose before or after the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed in respect of the Applicant, is sanctioned by this Court or is refused by the relevant creditors or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. THIS COURT ORDERS that the Applicants shall indemnify their respective directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b), 9(c) and 9(d) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with

respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of U.S.\$3,300,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 42 and 45 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order, or the insurer fails to fund defence costs on a timely basis; provided, however, any defence costs paid in respect of the same claim by the insurer shall first be used to reimburse the amounts paid under this paragraph to fund such costs.

**APPOINTMENT OF MONITOR**

24. THIS COURT ORDERS that FTI Canada is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their respective shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Agent and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and any reporting required by the DIP Agent, which information shall be reviewed with the Monitor and delivered to the DIP Agent and its counsel on a periodic basis, as agreed to by the DIP Agent;
- (e) advise the Applicants in their development of any one or more Plans and any amendments to such Plan or Plans;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on any Plan or Plans;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to the Monitor as may be necessary to perform its duties hereunder;
- (i) be at liberty to act as a Foreign Representative in any foreign proceedings in respect of the Applicants;

- (j) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;
- (k) advise and assist the Applicants, as requested in its negotiations with suppliers, customers, creditors and other stakeholders; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

26. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. THIS COURT ORDERS that the Monitor shall provide the DIP Agent and any other creditor of an Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by an Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the relevant Applicant may agree.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and counsel for the Applicants' directors and officers shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$50,000, each, respectively, and a retainer to counsel for the Applicants' directors and officers in the amount of \$20,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and counsel for the Applicants' directors and officers shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of U.S.\$500,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 42 and 45 hereof.

**DIP FINANCING**

33. THIS COURT ORDERS that the Canadian Subsidiary Borrower (as defined in the DIP Credit Agreement) is hereby authorized and empowered to obtain, borrow and repay under a credit facility pursuant to an agreement, substantially in the form of Exhibit "D" to the Supplemental Affidavit (subject to such non-material amendments thereto as may be consented to in advance to the Monitor) (the "DIP Credit Agreement") among the Applicants, Indalex Holdings Finance, Inc., Indalex Holding Corp., the non-Applicant affiliates party thereto, the lenders party thereto (the "DIP Lenders") and the DIP Agent as administrative agent for the purposes set out in the DIP Credit Agreement provided that the aggregate principal amount of the borrowings by the Applicants under such credit facility outstanding at any time shall not exceed a sub-facility in the amount of U.S. \$24,360,000 and shall be made in accordance with the terms of the DIP Loan Documents.

34. THIS COURT ORDERS that the Applicants other than Indalex Limited are hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the Canadian Obligations under the DIP Credit Agreement (as those are defined in the DIP Credit Agreement).

35. [RESERVED]

36. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to guarantee to and in favour of the DIP Agent and the DIP Lenders the "Secured Obligations" subject to and in accordance with the DIP Credit Agreement (as those terms are defined in the DIP Credit Agreement).

37. THIS COURT ORDERS that notwithstanding paragraph 36, the guarantee by the Applicants of the Secured Obligations under the DIP Credit Agreement in an amount equal to the amount of any reduction of the U.S. Revolving Exposure (as defined in the Prepetition Credit Agreement) plus the amount of the Swap Obligations (as defined in the DIP Credit Agreement) after the Effective Date shall not be enforceable only to the extent that this Court issues an order

declaring that any guarantee given by the Applicants and any security granted by the Applicants related to such guarantee in respect of the U.S. Guaranteed Obligations under the Prepetition Credit Agreement is voidable or not valid, not binding or not enforceable, provided, however, that the guarantee granted by the Applicants under the DIP Credit Agreement as to all other amounts constituting Secured Obligations under the DIP Credit Agreement is hereby deemed to be fully enforceable as against the Applicants and third parties, including any trustee in bankruptcy appointed in respect of any of the Applicants.

38. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver the DIP Credit Agreement and such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Credit Documents or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and subject to paragraph 37, the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders and the DIP Agent under and pursuant to the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

39. THIS COURT ORDERS that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lenders Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lenders under the DIP Documents. The DIP Lenders Charge shall have the priority set out in paragraphs 42 and 45 hereof.

40. THIS COURT ORDERS that, notwithstanding any other provision of this Order, but subject to paragraph 37:

- (a) the DIP Agent and the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Agent and the DIP Lenders Charge or any of the DIP Documents;
- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lenders Charge, the DIP Agent, on behalf of the DIP Lenders, upon three business

days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to DIP Documents and the DIP Lenders Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the DIP Documents or the DIP Lenders Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for bankruptcy orders against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Lenders, upon three business days notice to the Applicants and the Monitor, shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lenders in accordance with the DIP Documents and the DIP Lenders Charge, but subject to the priorities as set out in paragraphs 42 and 45 of this Order; and

- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

41. THIS COURT ORDERS AND DECLARES that, unless otherwise agreed, the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

42. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge and the DIP Lenders Charge, as among them, shall be as follows:

First – Administration Charge;

Second – Directors' Charge (up to a maximum amount of U.S.\$1.0 million);



Third – DIP Lenders Charge; and

Fourth – Directors Charge (for the balance thereof, being U.S.\$2.3 million).

43. THIS COURT ORDERS that any distribution in respect of the DIP Lenders Charge as amongst the beneficiaries thereto shall be governed by the DIP Documents.

44. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors' Charge or the DIP Lenders Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. THIS COURT ORDERS that each of the Administration Charge, the Directors' Charge and the DIP Lenders Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

46. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge the Administration Charge or the DIP Lenders Charge, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Agent and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

47. THIS COURT ORDERS that subject to paragraph 37, the Directors' Charge, the Administration Charge, the DIP Documents and the DIP Lenders Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any

assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicants pursuant to this Order or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

48. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Applicant's interest in such real property leases.

**SERVICE AND NOTICE**

49. THIS COURT ORDERS that the Applicants shall, within ten (10) business days of the date of entry of this Order, send notice of this Order to their known creditors, other than employees and creditors to which the Applicants owe less than \$5000, at their addresses as they appear on the Applicants' records, advising that such creditor may obtain a copy of this Order on the internet at the website of the Monitor, <http://cfcanda.fticonsulting.com/indalex> (the "Website") and, if such creditor is unable to obtain it by that means, such creditor may obtain a copy from the Monitor. The Monitor shall promptly send a copy of this Order to any interested

Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

50. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Website.

**GENERAL**

52. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

53. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

54. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

55. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

56. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided however, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the DIP Credit Agreement up to and including the date this Order may be varied or amended.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "D. J. [unclear]".

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAY 12 2009

PER / PAR:

A small handwritten signature or mark in black ink, possibly initials.

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. (the Applicants)

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

Proceeding commenced at Toronto

**AMENDED AMENDED AND RESTATED INITIAL  
ORDER**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street, Suite 2800  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Linc Rogers LSUC No.: 43562N  
Tel: (416) 863-4168

Katherine McEachern LSUC No.: 38345M  
Tel: (416) 863-2566  
Fax: (416) 863-2653

Jackie Moher LSUC No.: 53166V  
Tel: (416) 863-3174  
Fax: (416) 863-2653

Lawyers for the Applicants

BB

# TAB 4

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

THE HONOURABLE MR.	)	MONDAY, THE
	)	
JUSTICE CAMPBELL	)	20 <sup>th</sup> DAY OF JULY, 2009



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.

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. (collectively, the "Canadian Sellers") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale among Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc., the Canadian Sellers, and SAPA Holding AB (which has assigned all of its rights and obligations thereunder in respect of the Canadian Acquired Assets (as defined in the Sale Agreement) to SAPA Canada Inc.) (the "Canadian Purchaser") made as of June 16, 2009 and appended to the Affidavit of Fred Fazio sworn June 29, 2009, together with such non-material amendments relative to the Applicants as may be consented to by the Monitor (defined below) (the "Sale Agreement") and vesting in the Canadian Purchaser, the Canadian Sellers' right, title and interest in and to the Canadian Acquired Assets, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion and the Seventh Report of the court-appointed monitor, FTI Consulting Canada ULC (the "Monitor") and on hearing the submissions of counsel for the Canadian Sellers, counsel for the Monitor, counsel for the

Canadian Purchaser and counsel for the JPMorgan Chase Bank, N.A., and on being advised that the Canadian Sellers' Service List was served with the Motion Record herein;

**APPROVAL AND VESTING**

1. THIS COURT ORDERS that, if necessary, the time for service of this Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Canadian Sellers and its stakeholders. The execution of the Sale Agreement by the Canadian Sellers is hereby authorized and approved, and the Canadian Sellers are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of, or to further evidence or document, the Transaction and for the conveyance of the Canadian Acquired Assets to the Canadian Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Canadian Purchaser substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), and, with respect to the Quebec Property (as defined in Schedule B) only, the execution of a deed of transfer of the Quebec Property by Indalex Limited (being one of the Canadian Sellers), to the Canadian Purchaser in accordance with the Deed of Transfer (hereinafter defined) and, with respect to the Quebec Property only, the execution of the Deed of Mainlevée (as hereinafter defined) in accordance with paragraphs 9 and 10 of this Order, all of the Canadian Sellers' right, title and interest in and to the Canadian Acquired Assets described in the Sale Agreement (including, without limitation, the real and immoveable property described in Schedule B) shall vest absolutely in the Canadian Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), whether such Claims came into existence prior to, subsequent to, or as a result of any previous orders of this Court, contractually, by operation of law or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of



the Honourable Justice Morawetz dated April 3, 2009, as amended and restated; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, including, without limitation, registrations made at the Registry of Personal and Moveable Real Rights in the Province of Quebec; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D (the "Permitted Encumbrances")) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Acquired Assets are hereby expunged and discharged as against the Canadian Acquired Assets. Notwithstanding the foregoing, the Canadian Acquired Assets shall vest in the Canadian Purchaser subject to the Permitted Liens (as both terms are defined in the Sale Agreement);

## **REAL PROPERTY**

### **(a) Ontario**

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) (the "Toronto Land Registry Office") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and the *Land Registration Reform Act* (Ontario) with respect to the Toronto Property (as defined in Schedule B), the Land Registrar for the Toronto Land Registry Office is hereby directed to enter the Canadian Purchaser as the owner of the Toronto Property in fee simple, and is hereby directed to delete and expunge from title to the Toronto Property all of the Claims relating to the Toronto Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the Toronto Property listed in Schedule D.

5. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Peel (No. 43) (the "Mississauga Land Registry Office") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) and the *Land Registration Reform Act* (Ontario) with respect to the Mississauga Property (as defined in Schedule B), the Land Registrar for the Mississauga Land Registry Office is hereby directed to enter the Canadian Purchaser as the owner of the Mississauga Property in fee simple, and is hereby directed to delete and expunge from title to the Mississauga Property all of the Claims relating to the

Mississauga Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the Mississauga Property listed in Schedule D.

**(b) Alberta**

6. THIS COURT ORDERS that, subject to the Permitted Encumbrances relating to the Alberta Property (as defined in Schedule B) listed in Schedule D, upon being presented with an original letter from counsel to the Canadian Sellers, Blake, Cassels & Graydon LLP, directed to the Alberta Land Titles Office confirming receipt of the Canadian Purchase Price (as defined in the Sale Agreement) payable on Closing Date (as defined in the Sale Agreement), and an Affidavit of Value as prescribed by the *Land Titles Act* (Alberta), the Alberta Land Titles Office be and is hereby authorized and directed to cancel the existing certificates of title to the Alberta Property and to issue new certificates of title in the name of the Canadian Purchaser, c/o Heenan Blaikie P.O. Box 185, Suite 2600, 200 Bay Street, South Tower, Royal Bank Plaza, Toronto Ontario, M5J 2J4, as specifically set out in the said letter, and the Alberta Land Titles Office be and is hereby directed to delete and expunge from title to the Alberta Property all of the Claims relating to the Alberta Property, including but not limited to, the Claims listed on Schedule C, subject only to the Permitted Encumbrances relating to the Alberta Property listed in Schedule D.

7. THIS COURT ORDERS that the cancellation of titles and issuance of new titles and discharge of instruments as set out in paragraph 6 shall be registered notwithstanding the requirements of Section 191(1) of the *Land Titles Act* (Alberta).

**(c) British Columbia**

8. THIS COURT ORDERS that the BC Property (as defined in Schedule B) is hereby conveyed to and vested in the Canadian Purchaser and upon presentation for registration in the Land Title Office for the Land Title District of New Westminster of a certified copy of this Order, the Registrar of Land Titles (the "BC Registrar") is hereby directed to enter the Canadian Purchaser as owner of the BC Property together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licences, rights, covenants, restrictive covenants, commons, ways, profits, privileges, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of BC Property, and this Court, having considered

the interests of third parties, further orders that the BC Registrar is hereby directed to discharge, release, delete and expunge from title to the BC Property all of the Claims relating to the BC Property, including but not limited to, the Claims listed in Schedule C, subject only to the Permitted Encumbrances relating to the BC Property listed in Schedule D, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Canadian Purchaser in and to the BC Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Canadian Purchaser as aforesaid.

**(d) Quebec**

9. THIS COURT ORDERS AND DIRECTS, in order to give effect to this Order prior to closing of the Transaction, Indalex Limited and the Canadian Purchaser to enter into a deed of transfer with respect to the Quebec Property, upon the same terms and conditions substantially as those set forth in the draft deed of transfer attached hereto as Schedule E (the "Deed of Transfer"), which Deed of Transfer shall be effective only upon the delivery of the Monitor's Certificate to the Canadian Purchaser.

10. THIS COURT ORDERS AND DIRECTS, in order to give effect to this Order prior to closing of the Transaction, JPMorgan Chase Bank, N.A. to execute a deed of mainlevée with respect to the Claims listed in Schedule C relating to only the Quebec Property (the "Deed of Mainlevée"), which Deed of Mainlevée shall be effective only upon the delivery of the Monitor's Certificate to the Canadian Purchaser.

**GENERAL PROVISIONS**

11. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, proceeds from the sale of the Canadian Acquired Assets, which for clarity shall include, without limitation, all deposits, reserves, holdbacks and adjustments to the Canadian Purchase Price in favour of the Canadian Sellers (as defined in the Sale Agreement) (including amounts released from the Canadian Escrow Amount in accordance with the Sale Agreement), but shall not include the (i) Canadian Escrow Amount, and (ii) the Canadian Sellers' Cure Cost Amount (collectively, the "Sale Proceeds"), shall stand in the place and stead of the Canadian Acquired Assets, and that from and after the delivery of the Monitor's Certificate all Claims and

Encumbrances (other than the Permitted Exceptions and Permitted Liens) shall attach to the Sale Proceeds with the same priority as they had with respect to the Canadian Acquired Assets immediately prior to the sale, as if the Canadian Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

13. THIS COURT ORDERS that immediately following the filing of the Monitor's Certificate, the Monitor shall be authorized and empowered, in the name of and on behalf of the Applicants, (i) to take such acts as the Monitor shall deem necessary and appropriate to further give effect to, evidence or document the Transaction; and, (ii) make any disbursements required in connection with the actions described in (i) hereof and on account of fees and disbursements of the Monitor and its counsel and counsel to the Applicants, with no personal liability to the Monitor in connection therewith.

14. THIS COURT ORDERS AND DIRECTS that on Closing the Sale Proceeds shall be paid to the Monitor on behalf of the Canadian Sellers and on or following the Closing, subject to the Monitor on behalf of the Canadian Sellers, maintaining a reserve of the Sale Proceeds in an amount satisfactory to the Monitor (the "Reserve"), the Monitor on behalf of the Canadian Sellers is hereby authorized and directed, without further Order of the Court, to make one or more distributions (the "Distributions") to JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the "Agent") for and on behalf of the DIP Lenders (as defined in the Amended Amended Restated Initial Order dated May 12, 2009, as further amended, the "Initial Order") in an amount up to the aggregate amount of all primary indebtedness, liabilities and obligations now or hereafter owing by the Canadian Sellers to the DIP Lenders (the "Canadian Obligations"). To the extent that any Canadian Obligations are satisfied by any of the Canadian Sellers' affiliated entities resident in the United States (collectively, "Indalex US") (the "Guarantee Payment") Indalex US shall be entitled to be subrogated to the rights of the Agent and the DIP Lenders under the DIP Lenders Charge (as defined in the Initial Order) to the extent of such Guaranteed Payment and following indefeasible payment in full of the Canadian Obligations, Indalex US shall be entitled to receive any Distributions, pursuant to Indalex US'

subrogation rights under the DIP Lenders Charge, in an amount up to the Guarantee Payment, subject to the Reserve.

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) and pursuant to section 18 of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c P-39.1 (the “Quebec Privacy Act”), and any other similar legislation in the Provinces of British Columbia and Alberta, the Canadian Sellers are authorized and permitted to disclose and transfer to the Canadian Purchaser all human resources and payroll information in the Canadian Sellers’ records pertaining to the Canadian Sellers’ past and current employees. The Canadian Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects in compliance with the provisions of PIPEDA and the Quebec Privacy Act.

16. THIS COURT ORDERS that, notwithstanding:

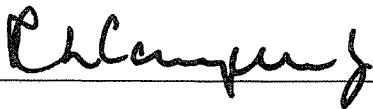
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Canadian Sellers and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Canadian Sellers;

the vesting of the Canadian Acquired Assets in the Canadian Purchaser pursuant to this Order and any Distributions made pursuant to paragraph 14 shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Canadian Sellers and shall not be void or voidable by creditors of the relevant Applicant nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

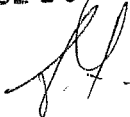
18. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Canadian Sellers and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Canadian Sellers, as may be necessary or desirable to give effect to this Order or to assist the Canadian Sellers and their agents in carrying out the terms of this Order.

19. THIS COURT ORDERS AND AUTHORIZES the provisional execution of this Order in the Province of Quebec.

  
\_\_\_\_\_

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 20 2009

PER / PAR: 

**Schedule A – Form of Monitor’s Certificate**

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”)

**MONITOR’S CERTIFICATE****RECITALS**

- A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the “Court”) dated April 3, 2009, FTI Consulting Canada ULC was appointed as the monitor of the Applicants.
- B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of June 16, 2009 (the “Sale Agreement”) among Indalex Limited, Indalex Holdings (B.C.) Ltd., and 6326765 Canada Inc. (collectively, the “Canadian Sellers”), Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc., and SAPA Holding AB (which has assigned all of its rights and obligations thereunder in respect of the Canadian Acquired Assets to SAPA Canada Inc.) (the “Canadian Purchaser”) and provided for the vesting in the Canadian Purchaser of the Canadian Sellers’ right, title and interest in and to the Canadian Acquired Assets, which vesting is to be effective with respect to the Canadian Acquired Assets upon the delivery by the Monitor to the Canadian Purchaser of a certificate confirming (i) the payment by the Canadian Purchaser of the Canadian Purchase Price for the Canadian Acquired Assets; (ii) that the conditions to Closing as set out in Article 9 of the Sale Agreement have been satisfied or waived by the

232

Canadian Sellers and the Canadian Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Canadian Purchaser has paid and the Canadian Sellers have received the Canadian Purchase Price for the Canadian Acquired Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 9 of the Sale Agreement have been satisfied or waived by the Canadian Sellers and the Canadian Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI Consulting Canada ULC, in its capacity  
as Monitor of the Applicants, and not in its  
personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:



### Schedule B – Real and Immoveable Property

1. PIN 10293-0044 (LT): Lot 4 on Plan 3521 North York and Part of Lots 5 and 9 on Plan 3521 North York, as in Instrument No. TB931608, subject to Instrument Nos. NY526170E and NY594168, Toronto (North York), City of Toronto  
  
(the "Toronto Property").
2. Firstly: PIN 13291-1236 (LT): Parcel 48-1, Section 43M-425, being Block 48 on Plan 43M-425, except Part 2 on Plan 43R-25314, together with an easement over Part of Lot 4, Concession 2 east of Hurontario Street, Toronto Township, designated as Parts 1, 2, and 3 on Plan 43R-31684, as in Instrument No. PR1340212, City of Mississauga, Regional Municipality of Peel  
  
Secondly: PIN 13291-1282 (LT): Part of Lot 4, Concession 2, east of Hurontario Street, as in Instrument No. RO1053352, save and except Part 1 on Plan 43R-25314 and Part 2 on Plan 43R-29386, subject to Instrument No. RO832725, together with an easement over Part of Lot 4, Concession 2 east of Hurontario Street, Toronto Township, designated as Parts 1, 2, and 3 on Plan 43R-31684, as in Instrument No. PR1340212, City of Mississauga, Regional Municipality of Peel  
  
(collectively, the "Mississauga Property").
3. PID: 011-122-111  
Block 13, District Lot 288, Group 1  
New Westminster District Plan 4667  
(the "BC Property")
4. Plan 2007JK, Block 8, Lots 13 & 14  
Excepting thereout all mines and minerals  
(the "Alberta Property")
5. Lot 2 528 235 of the Cadastre of Quebec  
Registration Division of Montreal  
(the "Quebec Property")

**Schedule C – Claims to be deleted and expunged from title to Real Property**Toronto Property:

1. Instrument No. AT1013992, registered on December 19, 2005, is an Application to Change Name by Owner wherein the name of the registered owner is changed from 1053334 Ontario Limited to 6326765 Canada Inc.
2. Instrument No. AT1053604, registered on February 2, 2006, is a charge/mortgage in favour of JPMorgan Chase Bank, N.A.
3. Instrument No. AT1053605, registered on February 2, 2006, is a notice of assignment of rents – general in favour of JPMorgan Chase Bank, N.A.
4. Instrument No. AT2045510, registered on April 9, 2009, is a charge/mortgage in favour of JPMorgan Chase Bank, National Association.
5. Instrument No. AT2045603, registered on April 9, 2009, is a notice of assignment of rents – general in favour of JPMorgan Chase Bank, National Association.

Mississauga Property:

6. Instrument No. PR986328, registered on December 19, 2005, is an Application to Change Name by Owner wherein the name of the registered owner is changed from 1053334 Ontario Limited to 6326765 Canada Inc.
7. Instrument No. PR988798, registered on December 22, 2005, is an Application to Change Name by Owner wherein the name of the registered owner is changed from 1053334 Ontario Limited to 6326765 Canada Inc.
8. Instrument No. PR991412, registered on December 30, 2005, is an Notice of Change of Address for service respecting a change in the address for service for 6326765 Canada Inc.
9. Instrument No. PR1008796, registered on February 2, 2006, is a charge/mortgage in favour of JPMorgan Chase Bank, N.A.
10. Instrument No. PR1008797, registered on February 2, 2006, is a notice of assignment of rents – general in favour of JPMorgan Chase Bank, N.A.
11. Instrument No. PR1624662, registered on April 9, 2009, is a charge/mortgage in favour of JPMorgan Chase Bank, National Association.
12. Instrument No. PR1624663, registered on April 9, 2009, is a notice of assignment of rents – general in favour of JPMorgan Chase Bank, National Association.

BC Property:

13. Instrument No. BA463980, registered on February 8, 2006, is a mortgage in favour of JPMorgan Chase Bank, National Association.

14. Instrument No. BA463981, registered on February 8, 2006, is an assignment of rents in favour of JPMorgan Chase Bank, National Association.
15. Instrument No. CA1082821, registered on April 14, 2009, is a mortgage in favour of JPMorgan Chase Bank, National Association.
16. Instrument No. CA1082822, registered on April 14, 2009, is an assignment of rents in favour of JPMorgan Chase Bank, National Association.

Alberta Property:

17. Instrument No. 061 067 977, registered on February 15, 2006, is a mortgage in favour of JPMorgan Chase Bank, National Association.
18. Instrument No. 061 067 978, registered on February 15, 2006, is a caveat re: assignment of rents in favour of JPMorgan Chase Bank, National Association.
19. Instrument No. 091 100 289, registered on April 16, 2009, is a mortgage in favour of JPMorgan Chase Bank, National Association.
20. Instrument No. 091 100 290, registered on April 16, 2009, is a caveat re: assignment of rents in favour of JPMorgan Chase Bank, National Association.

Quebec Property:

21. Instrument No. 13 033 043, registered on February 2, 2006, is a deed of hypothec in favour of JPMorgan Chase Bank, N.A.
22. Instrument No. 16 074 149, registered on April 9, 2009, is a deed of hypothec in favour of JPMorgan Chase Bank, N.A.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants Related to the Real Property (Registrations Unaffected by Vesting Order)**

Toronto Property:

1. Instrument No. NY378985, registered on March 7, 1962, is a by-law passed by the Corporation of the Borough of North York.
2. Instrument No. NY526170E, registered on December 11, 1967, is a transfer of easement and an expropriation certificate in favour of the Corporation of the Borough of North York.
3. Instrument No. NY594168, registered on May 20, 1971, is a transfer of easement in favour of the Corporation of the Borough of North York.
4. Instrument No. 64BA559, deposited on July 18, 1974, is a plan pursuant to the *Boundaries Act* which confirms the boundaries of Sheppard Avenue.
5. Instrument No. TR57844, registered on March 27, 2000, is notice of Pearson Airport zoning regulations.
6. Instrument No. AT2005560, registered on February 2, 2009, is a notice of security interest in favour of NRB Inc.

Mississauga Property:

7. Instrument No. TT120053, registered on June 15, 1959, is a notice of amendment to Toronto-Malton Airport zoning regulations.
8. Instrument No. TT144298, registered on March 13, 1962, is a notice of amendment to Toronto-Malton Airport zoning regulations.
9. Instrument No. VS248789, registered on February 12, 1973, is a notice of amendment to Toronto-Malton Airport zoning regulations.
10. Instrument No. LT350099, registered on November 4, 1981, is a notice of drainage and occupancy agreement in favour of the Corporation of the City of Mississauga.
11. Instrument No. LT351441, registered on November 12, 1981, is a by-law passed by the Corporation of the City of Mississauga.
12. Instrument No. LT1398393, registered on March 30, 1993, is an application (general) re: partial release of Instrument No. LT350099.
13. Instrument No. RO832725, registered on January 19, 1988, is a transfer of easement in favour of the Corporation of the City of Mississauga.
14. Instrument No. LT2057426, registered on March 27, 2000, is notice of Pearson Airport zoning regulations.

BC Property:

15. Instrument No. BE282930, registered on October 25, 1991, is a statutory right of way in favour of the City of Port Coquitlam.
16. Instrument No. BT274870, registered on July 30, 2002, is a development permit.
17. Instrument No. BH306436, registered on August 18, 1994, is a development permit.
18. Instrument No. BX589964, registered on December 1, 2005, is a covenant entered into between the City of Port Coquitlam and Indalex Holdings (B.C.) Ltd. with respect to the building covenant.

Alberta Property:

19. Instrument No. 6499IQ, registered on June 18, 1963, is a utility right of way in favour of the City of Calgary.
20. Instrument No. 6500IQ, registered on June 18, 1963, is a utility right of way in favour of the City of Calgary for pole anchor site.
21. Instrument No. 4661JC, registered on December 9, 1964, is a utility right of way in favour of Canadian Pacific Railway and C.N.R.
22. Instrument No. 4534LD, registered on November 4, 1971, is a utility right of way in favour of the City of Calgary.
23. Instrument No. 4535LD, registered on November 4, 1971, is a utility right of way in favour of the City of Calgary.
24. Instrument No. 731 074 497, registered on November 21, 1973 is a caveat re: encroachment agreement in favour of the City of Calgary.
25. Instrument No. 771 147 064, registered on October 20, 1977, is notice of Calgary International Airport zoning regulations.
26. Instrument No. 991 220 194, registered on August 3, 1999, is a caveat re: easement and common access agreement between Westway Equipment Leasing Inc. and Caradon Limited.

Quebec Property:

27. Instrument No. 1 459 846 is a servitude granted by Her Majesty The Queen in favour of the City of Pointe-Claire for sanitary trunk sewer.
28. Instrument No. 3 914 366 is a servitude in favour of Department of Transport (Canada) to limit the height of the buildings for the Dorval International Airport (Pierre-Elliott Trudeau International Airport).

235

29. Instrument No. 3 914 366 is a servitude in favour of Department of Transport (Canada) to limit the use of the immovables to industrial or commercial purposes.

**Schedule E - Deed of Transfer**

DEED OF TRANSFER

On this \_\_\_\_\_ day of \_\_\_\_\_, Two thousand nine (2009),

APPEARED: INDALEX LIMITED, a Canadian corporation, having a place of business at 5675 Kennedy Road, Mississauga, Ontario, L4Z 2H9, formerly known under the name Caradon Limited, which name was changed by Certificate of Amendment dated April 30th, 2000, and prior to that was known as Indal Corporation, which change was made by way of Articles of Amendment on March 30th, 1994, the whole as more fully described in the notice of change of name registered at Montreal under the number 13 033 163, herein acting and represented by Marc Flynn, its Authorized Representative, duly authorized for the purposes hereof in virtue of a power of attorney dated July 16th, 2009 and a resolution of Indalex Limited's board of directors dated \_\_\_\_\_ 2009;

(hereinafter called the "Transferor")

AND: SAPA CANADA INC., a corporation duly incorporated, having its head office at 200 Bay Street, South Tower, Royal Bank Plaza, Toronto, Ontario M5J 2J4, herein acting and represented by Timothy Lawson, its Vice-President, duly authorized for the purposes hereof as he so declares.

(hereinafter called the "Transferee")

WHICH PARTIES HAVE AGREED AS FOLLOWS:

1. TRANSFER

The Transferor hereby transfers to the Transferee hereto present and accepting all of its right, title and interest, in, and to the following immovable property, namely:

DESCRIPTION

An emplacement known and designated as lot number TWO MILLION FIVE HUNDRED AND TWENTY-EIGHT THOUSAND TWO HUNDRED



AND THIRTY-FIVE (2 528 235) of the Cadastre of Québec, Registration Division of Montreal.

With the building thereon erected bearing civic number 325 Avro Road, in the City of Pointe-Claire, Province of Québec.

As the same now subsists with all its rights, members and appurtenance and without any exception or reserve of any kind. (hereinafter called the "Property").

**2. TITLE**

The Property was conveyed unto the Transferor by **Indal Limited** in virtue of a Deed of Sale concluded February 18, 1994 and registered at Montreal on March 23, 1994, under number 4 686 343.

**3. POSSESSION**

In virtue of these presents, the Transferee shall become the owner and have immediate possession of the Property as of \_\_\_\_\_.

**4. ASSIGNMENT OF WARRANTIES**

The Transferor hereby assigns in favour of the Transferee all warranties related to the Property, if any, the Transferee hereby accepting such assignment.

**5. PRICE**

The present transfer is thus made for and in consideration of the price of EIGHT MILLION NINE HUNDRED AND FIFTY-TWO THOUSAND DOLLARS (\$8,952,000.00) paid upon execution of this Deed of Transfer, whereof quit.

**6. GOVERNING LAW**

This Deed of Transfer shall be governed by the laws of the Province of Québec.

**7. LANGUAGE**

The parties hereto declare that they have specifically requested, and do hereby confirm their request, that this Deed of Transfer be drafted and executed in the English language. *Les parties aux présentes déclarent qu'elles ont spécifiquement demandé que le présent acte de transfert soit rédigé et signé en anglais et par les présentes confirment leur dite demande.*

8. **PARTICULARS REQUIRED UNDER SECTION 9 OF AN ACT RESPECTING DUTIES ON TRANSFERS OF IMMOVABLES (R.S.Q. C. D-15.1)**

The Transferor and Transferee, in order to conform to the provisions of the above described Act, establish, acknowledge and declare the following particulars and facts:

- a) the name and address of the Transferor and Transferee are as they are described in their appearance above;
- b) the immovable property herein transferred is situated in the territory of the City of Pointe-Claire, Québec;
- c) according to the parties, the amount of the consideration for the transfer of the immovable property herein transferred is:  
  
EIGHT MILLION NINE HUNDRED AND FIFTY-TWO THOUSAND DOLLARS (\$8,952,000.00)
- d) according to the parties, the amount constituting the basis of imposition of the transfer duties is:  
  
ELEVEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$11,300,000.00);
- e) the amount of transfer duties, if applicable, is:  
  
ONE HUNDRED AND SIXTY-EIGHT THOUSAND DOLLARS (\$168,000.00); and
- f) the transfer of the immovable property does not include, at the same time, a corporeal immovable property and movable property which is permanently attached or joined to the immovable, without losing its individuality and without being incorporated and which, in the immovable, are used for the operation of an enterprise or the pursuit of activities, the whole as provided in section 1.0.1 of the above-described Act.

243

IN WITNESS THEREOF the parties hereto have duly executed this Deed of Transfer in Toronto, Province of Ontario, on the day first mentioned above.

**INDALEX LIMITED**

Per: \_\_\_\_\_

Name: Marc Flynn  
Title: Authorized Representative

**SAPA CANADA INC.**

Per: \_\_\_\_\_

Name: Timothy Lawson  
Title: Vice-President

CERTIFICATE TO A DEED OF TRANSFER EXECUTED BY INDALEX LIMITED, AS TRANSFEROR AND SAPA CANADA INC., AS TRANSFEREE IN TORONTO, ON \_\_\_\_\_, 2009

I, the undersigned, \_\_\_\_\_, hereby certify that:

- 1. I have verified the identity, quality and capacity of the Transferor, Indalex Limited, to the present Deed of Transfer;
- 2. The present Deed of Transfer represents the will expressed by the Transferor, Indalex Limited; and
- 3. The present Deed of Transfer is valid as to its form.

Certified at Montreal, on \_\_\_\_\_, 2009.

Name:

Quality:

Address:

\_\_\_\_\_

245

CERTIFICATE TO A DEED OF TRANSFER EXECUTED BY INDALEX  
LIMITED, AS TRANSFEROR AND SAPA CANADA INC., AS  
TRANSFEEE IN TORONTO, ON

\_\_\_\_\_ 2009

I, the undersigned, Paul M. Lalonde, Advocate, hereby certify that:

4. I have verified the identity, quality and capacity of the Transferee, SAPA Canada Inc., to the present Deed of Transfer;
5. The present Deed of Transfer represents the will expressed by the Transferee, SAPA Canada Inc.; and
6. The present Deed of Transfer is valid as to its form.

Certified at Toronto, on \_\_\_\_\_, 2009.

Name: Paul M. Lalonde  
Quality: Advocate Bar of Quebec  
Address: Royal Bank Plaza, South Tower  
200 Bay Street  
Bureau 2600  
Toronto ON M5J 2J4

\_\_\_\_\_  
Paul M. Lalonde

**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.**

Court File No: CV-09-8122-

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
Box 25, Commerce Court West  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

**Linc Rogers** LSUC No.: 43562N  
Tel: (416) 863-4168

**Katherine McEachern** LSUC No.: 38345M  
Tel: (416) 863-2566  
Fax: (416) 863-2653

**Jackie Moher** LSUC No.: 53166V  
Tel: (416) 863-3174  
Fax: (416) 863-2653

Lawyers for the Applicants

246

**TAB # 5.**

247

COURT FILE NO.: CV-09-8122-00CL  
DATE: 20090724

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

**RE: 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 CANADIAN INC. AND NOVAR INC.**

**Applicants**

**BEFORE: MORAWETZ J.**

**COUNSEL: Linc Rogers, Katherine McEachern and Jackie Moher, for the Applicants**

**Ashley Taylor and Lesley Mercer, for FTI Consulting Canada ULC,  
Monitor**

**Paul Macdonald and Jeff Levine, for JPMorgan (DIP Lender)**

**Kenneth D. Kraft, for SAPA Holding AB**

**Andrew Hatnay and Demetrios Yiokaris and Andrew Mckinnon, for  
Keith Carruthers and SERP Retirces**

**B. Empey, for Sun Indalex Finance LLC**

**John D. Leslie, for the U.S. Unsecured Creditors' Committee**

**G. Finlayson, for U.S. Bank as Trustee for the Notcholders**

**HEARD &  
DECIDED: JULY 2, 2009**

**ENDORSEMENT**



245

Page: 2

- [1] I heard argument in this matter on July 2, 2009 at the conclusion of which I dismissed the motion with reasons to follow. These are those reasons.
- [2] Members of the Indalex Supplemental Executive Retirement Plan or "SERP", (referred to collectively as the "SERP Group") brought this motion for an order requiring the Indalex Applicants to reinstate payment of supplemental pension benefits retroactive to April 2009.
- [3] The motion is opposed by the Indalex Applicants, the Noteholders and by the DIP Lender. Counsel to the DIP Lender submits that if these payments are made, they would constitute an event of default under the DIP Agreement. Such payments would need the consent or waiver from the DIP Lender which counsel submits, is not forthcoming.
- [4] The SERP Group have a contractual entitlement to pension benefits under the Supplemental Retirement Plan for executive employees of Indalex Limited and associated companies (the "Supplemental Plan").
- [5] The Supplemental Plan is an unfunded and non-registered supplemental pension plan. Benefits under the Supplemental Plan are paid out of the general revenues of the Indalex Applicants.
- [6] Immediately after filing for CCAA protection on April 3, 2009, the Indalex Applicants informed the SERP Group that their supplemental pension benefits were being stopped.
- [7] The situation confronting members of the SERP Group is very similar to that faced by certain former employees of Nortel Networks ("Former Nortel Employees") who recently brought a motion requesting an order requiring the Applicants in Nortel's CCAA proceedings (the "Nortel Applicants") to make payments which the Nortel Applicants were contractually obligated to pay to Former Nortel Employees, relating to the Transitional Retirement Allowance and any pension benefit payments Former Nortel Employees were entitled to receive in excess of the pension plan. The motion was dismissed. (See *Nortel Networks Corp., Re 2009 CarswellOnt. 3583*).
- [8] The reasons provided for the dismissal of the motion of the Former Nortel Employees are applicable to this case.
- [9] SERP payments are based on services provided to Indalex prior to April 2009. These obligations are, in my view, pre-filing unsecured obligations. A breach of the SERP payment obligations gives rise to an unsecured claim of the SERP Group against the Indalex Applicants. The SERP Group is stayed from enforcing these payment obligations.
- [10] The SERP Group has not established that they are entitled to any priority with respect to their SERP benefits and there is, in my view, no basis in principle, to treat the SERP Group differently than any other unsecured creditors of the Indalex Applicants. The reinstatement of the SERP payments would, in my view, represent an improper re-ordering of the existing priority regime.

Page: 3

[11] The Amended and Restated Order authorizes the Indalex Applicants to pay all reasonable expenses incurred by the Indalex Applicants in carrying on their business in the ordinary course. SERP payments are not, in my view, payments required to carry on the business and, accordingly, the Indalex Applicants are not authorized to pay the monthly SERP payments.

[12] In certain CCAA proceedings, the court has granted relief to permit payment of pre-filing unsecured debt. However, in these cases, such payments have for the most part, been considered to be crucial to the ongoing business of the debtor company. In this case, the Indalex Applicants are seeking a going concern solution for the benefit of all stakeholders and their resources should be used for such purposes. I have not been persuaded that the SERP payments are crucial to the ongoing business of the Indalex Applicants and such payments offer no apparent benefit to the Indalex Applicants. (*Re Nortel, supra*, at paragraphs 80 and 86.)

[13] The SERP Group submits that there are hardship issues that should be taken into account. In Nortel, a hardship exception was made. However, the Nortel exception was predicated, in part, on the reasonable expectation that there will be a meaningful distribution to unsecured creditors, including the Former Nortel Employees. The Nortel hardship exception recognizes that any distribution would represent an advance on the general distribution. The situation facing the Indalex Applicants is different. The Indalex Applicants have significant secured creditors and unlike the situation in Nortel, it is premature to comment on the prospects of any meaningful distribution to unsecured creditors.

[14] Counsel to SERP Group also submitted that CCAA protection in this case had been obtained for a company that was liquidating its assets. Counsel for the SERP Group submitted that Indalex had put itself up for sale and commenced a "marketing process" and as such it was not restructuring, rather, it was selling itself. This led to the submission that the cutting of benefits payable to the SERP Group was not necessary or justified for the sale of the company under the CCAA.

[15] I fail to see the relevance of this submission. At the present time, the Applicants are properly under CCAA protection. No motion has been brought to challenge the appropriateness of the CCAA proceedings and, in my view, nothing in the CCAA precludes the ability of a debtor applicant to sell its assets. See *Re Nortel Networks Corporation* - endorsement released July 23, 2009 on this point.

[16] Finally, counsel to SERP Group placed emphasis on the fact that the amount required to satisfy the obligations to SERP Group is not significant. While this submission may be attractive on the surface, to give effect to this argument would violate a fundamental tenet of insolvency law, namely, that all unsecured creditors receive equal treatment. In my view, there is no basis to prefer the SERP Group or, indeed, any retired executive who is entitled to SERP payments in priority to other unsecured creditors.

[17] Counsel to SERP Group also relied upon *Doman Industries et al* (2004) B.C.S.C. 7333 for the proposition that, the fact that a company can reduce its costs if it can terminate contracts, is not sufficient for a CCAA court to authorize the termination of the contract. In *Doman, supra*, the point at issue concerned licences under the *Forest Act* which created the concept of

250

replaceable contracts. Doman held certain licences. As noted by Tysoe J. (as he then was), at paragraph 7, a replaceable contract is a form of evergreen contract which contains statutorily mandated provisions, the most important of which is that the licence holder must offer a new or replacement contract to the contractor upon each expiry of the term of the contract as long as the contractor is not in default under the contract. That is not the situation in this case. The contractual situation in *Doman, supra*, is not, in my view, comparable to this case. *Doman* is clearly distinguishable on the facts.

[18] For the forgoing reasons, the motion of SERP Group for reinstatement of SERP benefits is dismissed.



MORAWETZ J.

**Heard and Decided:** July 2, 2009

**Typed Version Released:** July 24, 2009

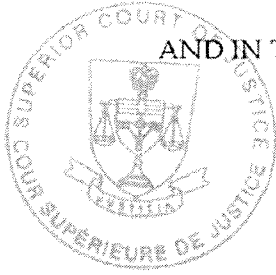
**TAB # 6.**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) THURSDAY, THE 30<sup>TH</sup>  
JUSTICE MORAWETZ ) DAY OF JULY, 2009

BETWEEN:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS 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  
(Claims Procedure)

THIS MOTION, made by Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc. (the "Applicants") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") for an order approving a procedure for the determination and resolution of claims filed against the Applicants and a procedure for the filing of claims against the Directors and Officers of the Applicants and authorizing and directing the Monitor to administer the claims procedure in accordance with its terms, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Monitor's Eighth Report, and on hearing the submissions of counsel to the Applicants and the Monitor.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## DEFINITIONS

2. THIS COURT ORDERS that for purposes of this Order the following terms shall have the following meanings:
- a) "**Administration Charge**" means the Administration Charge as defined in the Initial Order;
  - b) "**Applicants**" means Indalex Limited, Indalex Holdings (B.C.) Ltd., 6326765 Canada Inc. and Novar Inc;
  - c) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
  - d) "**CCAA**" has the meaning set forth in the recitals hereto;
  - e) "**Claim**" means any right or claim, other than any claim secured by the Charges created by the Initial Order, of any Person, against any of the Applicants, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind, that exists at the Filing Date, or which has arisen subsequent to the Filing Date and constitutes a claim for damages or has arisen as a result of the termination or repudiation of an executory contract (including employment contracts), pension plans, or lease by the Applicants, and any interest that may accrue thereon for which there is an obligation to pay, and costs which such person would be entitled to receive pursuant to the terms of any contract with such Person at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to property or assets or to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) against any property or assets, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future;
  - f) "**Claimant**" means a Person asserting a Claim;
  - g) "**Claims Bar Date**" means 5:00 p.m. (Toronto time) on August 28, 2009, or any later date ordered by the Court;

- h) **"Claims Officer"** means any individual appointed to act as a Claims Officer for purposes of the Claims Procedure;
- i) **"Claims Procedure"** means the procedures outlined in this Order, including the Schedules;
- j) **"Claims Procedure Order"** means this Order;
- k) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- l) **"Creditor"** means any Person having a Claim;
- m) **"D&O Claim"** means any existing or future right of any Person against one or more of the Directors and/or Officers of an Applicant which arose or arises as a result of such Director's or Officer's position, supervision, management or involvement as a Director or Officer of an Applicant, whether such right, or the circumstances giving rise to it, arose before or after the Initial Order and whether enforceable in any civil, administrative or criminal proceedings;
- n) **"D&O Claimant"** means a Person asserting a D&O Claim;
- o) **"D&O Counsel"** means Fasken Martineau DuMoulin LLP in its capacity as independent counsel to the Directors and Officers of the Applicants;
- p) **"D&O Creditor"** means any Person having a D&O Claim;
- q) **"Directors"** means the directors and former directors of each of the Applicants;
- r) **"Dispute Package"** means with respect to any Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;
- s) **"Filing Date"** means April 3, 2009;
- t) **"Initial Order"** means the Initial Order of the Honourable Mr. Justice Morawetz dated April 3, 2009, as extended and amended from time to time;
- u) **"Known Creditor"** means a Person who the Applicants have notice or knowledge may have a Claim or a D&O Claim;
- v) **"Monitor"** means FTI Consulting Canada ULC, in its capacity as the Court-appointed Monitor of the Applicants;
- w) **"Monitor's Website"** means <http://cfcanda.fticonsulting.com/indalex>;
- x) **"Notice to Creditors"** means the notice for publication, substantially in the form attached as Schedule "1";

- y) **"Notice of Dispute"** means a notice delivered to the Monitor by a Claimant disputing a Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as Schedule "4" and shall set out the reasons for the dispute;
- z) **"Notice of Revision or Disallowance"** means a notice informing a Claimant that the Monitor has revised or disallowed such Claimant's Claim, which notice shall be substantially in the form attached hereto as Schedule "3" and shall set out the reasons for revision or rejection;
- aa) **"Officers"** means the officer and former officers of each of the Applicants;
- bb) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or similar entity, howsoever designated or constituted;
- cc) **"Plan"** means any plan of compromise or arrangement which may be filed by the Applicants and presented to the Creditors for approval pursuant to the CCAA;
- dd) **"Proof of Claim"** means a Proof of Claim filed by a Claimant, substantially in the form attached as Schedule "2";
- ee) **"Proof of D&O Claim"** means a Proof of D&O Claim filed by a D&O Claimant, substantially in the form attached as Schedule "5"; and
- ff) **"Proven Claim"** means the amount and classification of a Creditor's Claim as finally determined in accordance with this Claims Procedure.

#### SOLICITATION OF CLAIMS AND D&O CLAIMS

##### Notice to Creditors

3. **THIS COURT ORDERS** that on or before 5:00 p.m. (Toronto time) on July 31, 2009 each of the Applicants shall provide to the Monitor a list of Known Creditors in form satisfactory to the Monitor.
4. **THIS COURT ORDERS** that the Monitor shall send a Proof of Claim and a copy of the Claims Procedure to each Known Creditor by regular prepaid mail on or around August 5, 2009.



5. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors to be placed in each of the Globe and Mail (national edition) and the Wall Street Journal on or around August 5, 2009.
6. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors to be posted on the Monitor's Website from on or around July 31, 2009 until the Claims Bar Date.

**Deadline for Filing a Proof of Claim**

7. **THIS COURT ORDERS** that any Person that wishes to assert a Claim must file a Proof of Claim, together with all relevant supporting documentation in respect of such Claim, so that such Proof of Claim is received by the Monitor by no later than the Claims Bar Date.
8. **THIS COURT ORDERS** that any Person who does not deliver a Proof of Claim in respect of a Claim to the Monitor by the Claims Bar Date shall be forever barred from asserting or enforcing such Claim against the Applicants and the Applicants shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished.

**Deadline for Filing a D&O Proof of Claim**

9. **THIS COURT ORDERS** that any Person that wishes to assert a D&O Claim must file a Proof of D&O Claim, together with all relevant supporting documentation in respect of such D&O Claim, so that such Proof of D&O Claim is received by the Monitor by no later than the Claims Bar Date.
10. **THIS COURT ORDERS** that any Person who does not deliver a Proof of D&O Claim in respect of a D&O Claim to the Monitor by the Claims Bar Date shall be forever barred from asserting or enforcing such D&O Claim against the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of such D&O Claim and such D&O Claim shall be extinguished.

**DETERMINATION OF CLAIMS**

11. **THIS COURT ORDERS** that the Monitor, in consultation with the Applicants, shall review each Proof of Claim received by the Claims Bar Date and may accept, revise or disallow the Claim. At any time the Monitor may request additional information with respect to any Claim.
12. **THIS COURT ORDERS** that the Monitor may attempt to consensually resolve the classification and amount of any Claim with the Claimant prior to accepting, revising or disallowing such Claim.
13. **THIS COURT ORDERS** that if the Monitor determines to revise or disallow a Claim the Monitor shall send a Notice of Revision or Disallowance to the Claimant.
14. **THIS COURT ORDERS** that if a Claimant disputes the classification or amount of its Claim as set forth in a Notice of Revision or Disallowance and such Claimant intends to contest the Notice of Revision or Disallowance then such Claimant shall deliver a Notice of Dispute so that such Notice of Dispute is received by the Monitor by no later than 5:00 p.m. (Toronto time) on the day which is fourteen days after the date of the Notice of Revision or Disallowance or such later date as the Court may order.
15. **THIS COURT ORDERS** that any Claimant who fails to deliver a Notice of Dispute to the Monitor by the deadline set forth in paragraph 14 shall be deemed to accept the classification and amount of its Claim as set out in the Notice of Revision or Disallowance and the Claim as set out in the Notice of Revision or Disallowance shall constitute a Proven Claim.
16. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute, the Monitor may:
  - a) attempt to consensually resolve the classification and the amount of the Claim with the Claimant;
  - b) deliver a Dispute Package to the Claims Officer; and/or
  - c) schedule a 9:30 appointment with the Court for the purpose of scheduling a motion to resolve the Claim and at such motion the Claimant shall be deemed to be the applicant and the Monitor shall be deemed to be the respondent.

17. **THIS COURT ORDERS** that upon receipt of a Dispute Package, the Claims Officer shall schedule and conduct a hearing to determine the classification and/or amount of the Claim and shall as soon as practicable thereafter notify the Monitor and the Claimant of his or her determination.
18. **THIS COURT ORDERS** that the Monitor or the Claimant may appeal the Claims Officer's determination to this Court within ten days of notification of the Claims Officer's determination of such Claimant's Claim by serving upon the Monitor or the Claimant, as applicable, and filing with this Court a notice of motion returnable on a date to be fixed by this Court. If an appeal is not filed within such period then the Claims Officer's determination shall, subject to a further order of the Court, be deemed to be final and binding and shall be a Proven Claim.
19. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the manner in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Claim.

#### **DETERMINATION OF D&O CLAIMS**

20. **THIS COURT ORDERS** that the Monitor shall be entitled to bring a motion seeking approval of a procedure for the evaluation and adjudication of any D&O Claims filed in accordance with the Claims Procedure, which procedure shall be developed in consultation with the D&O Counsel.

#### **NOTICE OF TRANSFEREES**

21. **THIS COURT ORDERS** that if a Claimant, a D&O Claimant, a Creditor, a D&O Creditor, or any subsequent holder of a Claim or a D&O Claim, who has been acknowledged by the Monitor as the holder of the Claim or D&O Claim, transfers or assigns that Claim or D&O Claim to another Person the Monitor shall not be obligated to give notice to or to otherwise deal with the transferee or assignee of the Claim or D&O Claim as the holder of such Claim or D&O Claim unless and until actual notice of transfer or assignment, together with satisfactory evidence of such

transfer or assignment, has been delivered to the Monitor. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the holder of such Claim or D&O Claim and shall be bound by notices given and steps taken in respect of such Claim or D&O Claim in accordance with the provisions of this Order.

22. **THIS COURT ORDERS** that if a Claimant, a D&O Claimant, a Creditor, a D&O Creditor, or any subsequent holder of a Claim or a D&O Claim, who has been acknowledged by the Monitor as the holder of the Claim or D&O Claim, transfers or assigns the whole of such Claim or D&O Claim to more than one Person or part of such Claim or D&O Claim to another Person, such transfers or assignments shall not create separate Claims or D&O Claims and such Claims or D&O Claims shall continue to constitute and be dealt with as a single Claim or D&O Claim notwithstanding such transfers or assignments. The Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim or D&O Claim only as a whole and then only to and with the Person last holding such Claim or D&O Claim, provided such Claimant, D&O Claimant, Creditor or D&O Creditor may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim or D&O Claim, but only as a whole, shall be dealt with by a specified Person and in such event such Person shall be bound by any notices given or steps taken in respect of such Claim or D&O Claim with such Claimant, D&O Claimant, Creditor or D&O Creditor in accordance with the provisions of this Order.
23. **THIS COURT ORDERS** that neither the Applicants nor the Monitor are under any obligation to give notice to any Person other than a Claimant holding a Claim or a D&O Claimant holding a D&O Claim, and shall have no obligation to give notice to any Person holding a security interest, lien or charge in, or a pledge or assignment by way of security in, a Claim or a D&O Claim.

#### **GENERAL PROVISIONS**

24. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to appoint one or more individuals to act as the Claims Officer to arbitrate disputed Claims in

accordance with the Claims Procedure and that any Claims Officer shall be entitled to the benefits of and rely upon the Administration Charge as security for its reasonable professional fees and disbursements in connection with such appointment as Claims Officer.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Order.
26. **THIS COURT ORDERS** that for the purposes of the Claims Procedure and the Plan, all Claims which are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging the currency to Canadian dollars on the Filing Date.
27. **THIS COURT ORDERS** that any notice or communication required to be delivered pursuant to the terms of this Order shall be in writing and may be delivered by facsimile, email or electronic transmission, personal delivery, courier or, as necessary, by prepaid mail addressed to the respective party.
28. **THIS COURT ORDERS** that any document, notification or notice required to be delivered to the Monitor under this Claims Procedure shall be delivered to:

FTI Consulting Canada ULC  
In its capacity as Monitor of Indalex Limited, Indalex Holdings (B.C.) Ltd.,  
6326765 Canada Inc. and Novar Inc.  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1  
Attention: Ms Rachel Gillespie  
Telephone: 416-572-2476  
Facsimile: 416-572-4068  
Email: rachel.gillespie@fticonsulting.com

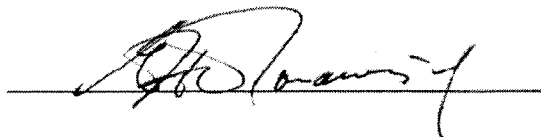
29. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Procedure is not a

Business Day then such notice or communication shall be required to be delivered on the next Business Day.

30. **THIS COURT ORDERS** that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be delivered by email, facsimile transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the seven (7) day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice by email, facsimile transmission, personal delivery or courier prior to 5:00 p.m. (local time) on a Business Day, when received, if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day, and in the case of a notice mailed as aforesaid, on the fourth business day following the date on which such notice or other communication is mailed.
31. **THIS COURT ORDERS** that the Monitor is authorized to use reasonable discretion as to adequacy of compliance with respect to the manner in which Proofs of Claim, Notices of Dispute and other notices are completed and executed and may, where it is satisfied that a Claim has been adequately filed or proven, waive strict compliance with the requirements of this Claims Procedure as to completion and execution of Proofs of Claim, Notices of Dispute and other notices to be provided herein.
32. **THIS COURT ORDERS** that references to the singular include the plural and to the plural include the singular.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO.:

JUL 30 2009



Schedule "1"

---

NOTICE TO CREDITORS AND OTHERS

---

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

THE CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE  
APPLICANTS (collectively, the "Directors and Officers")

---

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

---

TO: CREDITORS AND TO ANY OTHER PERSON OR PARTIES

**NOTICE OF CLAIMS PROCEDURE AND CLAIMS BAR DATE FOR THE  
APPLICANTS AND DIRECTORS AND OFFICERS PURSUANT TO THE  
COMPANIES' CREDITORS ARRANGEMENT ACT (THE "CCAA")**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an order of the Honourable Mr. Justice Morawetz of the *Ontario* Superior Court of Justice (Commercial List) dated July 30, 2009 (the "Claims Procedure Order"). Any person who believes that it has a Claim or a D&O Claim against an Applicant or a Director or Officer should send a Proof of Claim or a Proof of D&O Claim to the Applicants c/o FTI Consulting Canada ULC, in its capacity as the Court-appointed Monitor of the Applicants to be received by 5:00 p.m. (Eastern Standard Time) on August 28, 2009 or such other date as ordered by the Court (the "Claims Bar Date").

**CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

Claimants who require a Proof of Claim or Proof of D&O Claim form may access these forms at the Monitor's website at <http://cfcanada.fticonsulting.com/indalex> or they may contact the Applicants, c/o FTI Consulting Canada ULC, in its capacity as the

Court-appointed Monitor of the Applicants (**Attention: Rachel Gillespie**, Telephone: 1-416-572-2476 and Fax: 1-416-572-4068), to obtain a claims package.

Claimants should file their Proof of Claim or Proof of D&O Claim with the Monitor by mail, fax, email, courier or hand delivery, so that the Proof of Claim or Proof of D&O Claim is actually received by the Claims Bar Date at the address below.

**Address of Monitor:**

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2009.



Schedule "2"

PROOF OF CLAIM

IN RESPECT OF CLAIMS AGAINST
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,
6326765 CANADA INC. AND NOVAR INC.
(collectively, the "Applicants")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF CREDITOR

- 1. Full Legal Name of Creditor: (the "Creditor").
2. Full Mailing Address of the Creditor:
3. Telephone Number of Creditor:
4. Facsimile Number of Creditor:
5. Attention (Contact Person):
6. Email address:
7. Has the Claim been sold or assigned by Creditor to another party?

IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

**B. PROOF OF CLAIM:**

I, \_\_\_\_\_ [Name of Creditor or Representative of the Creditor],  
do hereby certify:

A) that I am (please check one):

\_\_\_\_ the Creditor; or  
\_\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the Claim described herein;

B) The Creditor is owed as follows:

**Secured Claim** \$ \_\_\_\_\_ Cdn on a secured basis,  
I have valued my security at \$ \_\_\_\_\_ (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

**Unsecured Claim** \$ \_\_\_\_\_ Cdn on an unsecured basis

*Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).*

**C. PARTICULARS OF CLAIM:**

Name of the entity and the amount for each entity which owes the amount claimed:

	Secured	Unsecured
<input type="checkbox"/> Indalex Limited	\$ _____	\$ _____
<input type="checkbox"/> Indalex Holdings (B.C.) Ltd.	\$ _____	\$ _____
<input type="checkbox"/> 6326765 Canada Inc.	\$ _____	\$ _____
<input type="checkbox"/> Novar Inc	\$ _____	\$ _____

Description of transaction, agreement or event giving rise or relating to the Claim:

\_\_\_\_\_  
\_\_\_\_\_

If the Claim is contingent or unliquidated, state the basis and provide evidence upon which the Claim has been valued:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

265

Description of security, if any, granted to the Creditor or assigned by Creditor in respect of the Claim:

\_\_\_\_\_  
\_\_\_\_\_

Estimated value of security outlined above as at the date of the Claim:

\_\_\_\_\_

**IF CLAIMANTS REQUIRE ADDITIONAL SPACE THEN PROVIDED HEREIN, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF CLAIM WHICH MUST SHOW THE DATE, THE NUMBER AND THE AMOUNT OF EACH INVOICE OR CHARGE, TOGETHER WITH THE DATE, THE NUMBER AND THE AMOUNT OF ALL CREDITS, COUNTERCLAIMS, DISCOUNTS, PAYMENTS, ETC., TO WHICH THE APPLICANTS ARE ENTITLED.

**D. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

1. Full Legal Name of Assignee(s) of Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

\_\_\_\_\_  
(the "Assignee(s)")

Amount of Total Claim Assigned \$ \_\_\_\_\_

Amount of Total Claim Not Assigned \$ \_\_\_\_\_

Total Amount of Claim \$ \_\_\_\_\_

(should equal "Total Claim" as entered on Section B)

2. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Telephone Number of Assignee(s): \_\_\_\_\_

4. Facsimile Number of Assignee(s): \_\_\_\_\_

5. Email address of Assignee(s): \_\_\_\_\_

6. Attention (Contact Person): \_\_\_\_\_

266

**E. FILING OF CLAIMS:**

The duly completed Proof of Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following email address, address or facsimile:

Failure to file your Proof of Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a Claim against the Applicants.

This Proof of Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of individual completing this form)

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print name)

267

Schedule "3"

---

NOTICE OF REVISION OR DISALLOWANCE

---

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

---

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

---

**TO:** [insert name and address of creditor]  
**FROM:** FTI Consulting Canada ULC. in its capacity as Monitor of the Applicants.

Terms not otherwise defined in this Notice have the meaning ascribed to them in the Order of the Superior Court of Justice for Ontario made July 30, 2009 ("Claims Procedure Order"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at <http://cfcanada.fticonsulting.com/indalex> or by contacting the Monitor as set out below.

This Notice of Revision or Disallowance is issued pursuant to the Claims Procedure Order.

The Monitor has reviewed your Claim, as set out in your Proof of Claim and hereby gives you notice that is has revised or rejected your Claim as follows:

268

<u>Claim Against:</u>	<u>Amount Per Proof Of Claim</u>	<u>Disallowed Amount</u>	<u>Allowed Amount</u>	<u>Secured</u>	<u>Unsecured</u>
Indalex Limited	\$ _____	\$ _____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
Indalex Holdings (B.C.) Ltd.	\$ _____	\$ _____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
6326765 Canada Inc.	\$ _____	\$ _____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
Novar Inc.	\$ _____	\$ _____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>TOTAL</b>	\$ _____	\$ _____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>

**REASONS FOR DISALLOWANCE:**

---



---



---



---



---



---

If you do not agree with this Notice of Revision or Disallowance please take notice of the following:

1. If you intend to dispute a Notice of Revision or Disallowance, you must, by 5:00 p.m. (Eastern Standard Time) on the day which is fourteen (14) days after the date of this Notice of Revision or Disallowance or such later date as the Court may order, deliver a Notice of Dispute by email, facsimile transmission, courier, personal delivery or prepaid mail to the address indicated herein. The form of Notice of Dispute is attached to this Notice.
2. If you do not deliver a Notice of Dispute, the value of your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

*Address for Service of Dispute Notices:*

**Address of Monitor:**

Indalex Limited and/or  
Indalex Holdings (B.C.) Ltd. and/or  
6326765 Canada Inc. and/or  
Novar Inc.  
c/o FTI Consulting Canada ULC,  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
Facsimile: (416)-572-4068  
E-mail: rachel.gillespie@fticonsulting.com

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD,  
THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON  
YOU.**

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

FTI CONSULTING CANADA ULC.

In its capacity as Court-Appointed Monitor of the Applicants

Per: \_\_\_\_\_

Encl.

Schedule "4"

NOTICE OF DISPUTE

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,  
6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c., C-36, as amended

Pursuant to the order of the Honourable Mr. Justice Morawetz dated July 30, 2009, we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance issued by FTI Consulting Canada ULC in its capacity as Monitor of the Applicants in respect of our Claim.

A. PARTICULARS OF CREDITOR:

(1) Full Legal Name of Creditor: \_\_\_\_\_

(2) Full Mailing Address of Creditor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Telephone Number of Creditor: \_\_\_\_\_<sup>2</sup>

\_\_\_\_\_

<sup>2</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST



- (4) Facsimile Number of Creditor: \_\_\_\_\_ 2
- (5) E-mail Address of Creditor: \_\_\_\_\_ 2
- (6) Attention (Contact Person): \_\_\_\_\_ 2

**B. PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

- (1) Have you acquired this Claim by assignment? Yes  No   
(if yes, attach documents evidencing assignment)
- (2) Full Legal Name of original creditor(s): \_\_\_\_\_

**C. DISPUTE :**

We hereby disagree with the value of our Claim as set out in the Notice of Revision or Disallowance:

	Claim per Notice of Revision or Disallowance	Claim per Creditor	Indicate Secured/ Unsecured
Indalex Limited	\$	\$	
Indalex Holdings (B.C.) Ltd.	\$	\$	
6326765 Canada Inc.	\$	\$	
Novar Inc.	\$	\$	
Total Claim	\$	\$	

**D. REASONS FOR DISPUTE:**

*(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)*

---

**PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.**

272

---



---



---



---



---



---



---



---

**THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY FACSIMILE TRANSMISSION, COURIER, PERSONAL SERVICE OR PREPAID MAIL TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED BY 5:00 P.M. (EASTERN STANDARD TIME) ON THE DAY WHICH IS FOURTEEN (14) DAYS AFTER THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE, OR SUCH LATER DATE AS THE COURT MAY ORDER.**

*Address for Service of Dispute Notices:*

**Address of Monitor:**

Indalex Limited and/or  
 Indalex Holdings (B.C.) Ltd. and/or  
 6326765 Canada Inc. and/or  
 Novar Inc.  
 c/o FTI Consulting Canada ULC,  
 TD Canada Trust Tower  
 161 Bay Street, 27<sup>th</sup> Floor  
 Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
 Facsimile: (416)-572-4068  
 E-mail: rachel.gillespie@fticonsulting.com

Schedule "5"

PROOF OF D&O CLAIM

IN RESPECT OF CLAIMS AGAINST  
INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD.,

6326765 CANADA INC. AND NOVAR INC.  
(collectively, the "Applicants")

and

CURRENT AND FORMER DIRECTORS AND OFFICERS OF THE APPLICANTS  
(collectively, the "Directors and Officers")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C. 1985, c., C-36, as amended

A. PARTICULARS OF D&O CREDITOR

1. Full Legal Name of D&O Creditor: \_\_\_\_\_ (the "Creditor").  
*(Full legal or Corporate name should be the name of the original Creditor. Do not file separate Proofs of D&O Claim by division of the same Creditor.)*
2. Full Mailing Address of the Creditor:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Telephone Number of Creditor: \_\_\_\_\_ 3
4. Facsimile Number of Creditor: \_\_\_\_\_ .
5. Attention (Contact Person): \_\_\_\_\_ .
6. Email address: \_\_\_\_\_ .

<sup>1</sup> IN ORDER TO ENSURE ALL CLAIMS ARE PROCESSED IN AN EXPEDITED MANNER YOU MUST PROVIDE ONE (1) OR MORE OF YOUR TELEPHONE NUMBER, FAX NUMBER OR EMAIL ADDRESS.

274

7. Has the D&O Claim been sold or assigned by Creditor to another party?  
Yes\_\_\_ No\_\_\_ (If yes please complete section D)

**B. PROOF OF D&O CLAIM:**

I, \_\_\_\_\_ [Name of Creditor or Representative of the Creditor], do hereby certify:

A) that I am (please check one):

\_\_\_ the Creditor; or  
\_\_\_ hold the following position of \_\_\_\_\_ of the Creditor

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

C) The Creditor is owed as follows:

**Secured D&O Claim** \$\_\_\_\_\_ Cdn on a secured basis,  
I have valued my security at \$\_\_\_\_\_ (this will be the amount at which you value your secured claim, the difference between the secured claim amount and the value of your security will be the amount of your unsecured claim)

**Unsecured D&O Claim** \$\_\_\_\_\_ Cdn on an unsecured basis

*Note: Claims in a foreign currency are to be converted to Canadian dollars at the exchange rate of the Bank of Canada as at the Filing Date, April 3, 2009. For example, the U.S. to Canadian Dollar exchange rate conversion on such date was U.S.\$1 = CDN\$0.8056).*

**C. PARTICULARS OF D&O CLAIM:**

Name of the Director and the amount for each Director which owes the amount claimed:

Director	Secured	Unsecured
<input type="checkbox"/>	\$_____	\$_____
<input type="checkbox"/>	\$_____	\$_____
<input type="checkbox"/>	\$_____	\$_____
<input type="checkbox"/>	\$_____	\$_____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

\_\_\_\_\_  
\_\_\_\_\_



- 4. Facsimile Number of Assignee(s): \_\_\_\_\_
- 5. Email address of Assignee(s): \_\_\_\_\_
- 6. Attention (Contact Person): \_\_\_\_\_

**E. FILING OF D&O CLAIMS:**

The duly completed Proof of D&O Claim together with supporting documentation must be returned and received by the Monitor, no later than 5:00 pm (Eastern Daylight Savings Time) on August 28, 2009, to the following address or facsimile:

Failure to file your Proof of D&O Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing a D&O Claim against the Applicants.

This Proof of D&O Claim must be delivered by email, facsimile transmission, personal delivery, courier or prepaid mail at the following address:

Address of Monitor:

Indalex Limited and/or  
 Indalex Holdings (B.C.) Ltd. and/or  
 6326765 Canada Inc. and/or  
 Novar Inc.  
 c/o FTI Consulting Canada ULC,  
 TD Canada Trust Tower  
 161 Bay Street, 27<sup>th</sup> Floor  
 Toronto, Ontario M5J 2S1

Attention: Ms. Rachel Gillespie

Telephone: (416)-572-2476  
 Facsimile: (416)-572-4068  
 E-mail: rachel.gillespie@fticonsulting.com

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
 (Signature of Witness  
 form)

\_\_\_\_\_  
 (Signature of individual completing this  
 form)

\_\_\_\_\_  
 (Please print name)

\_\_\_\_\_  
 (Please print name)

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.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**CLAIMS PROCEDURE  
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  
**Maria Konyukhova LSUC#: 52880V**  
Tel: (416) 869-5230  
Fax: (416) 947-0866

Lawyers for FTI Consulting Canada ULC

277

**TAB # 7.**





ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. ) TUESDAY, THE 27<sup>TH</sup> DAY  
)  
JUSTICE MORAWETZ ) OF OCTOBER, 2009

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  
(Increase to Monitor's Powers and Stay Extension)

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 an increase to the powers of the Monitor and an order extending the Stay Period (as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Eighth Report of the Monitor dated July 28, 2009 (the "Eighth Report"), the Ninth Report of the Monitor dated August 26, 2009 (the "Ninth Report") and the Tenth Report of the Monitor dated October 21, 2009 (the "Tenth Report"), and on hearing the

submissions of counsel to the Monitor, the Applicants 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.

**PAYMENTS TO MONITOR**

2. **THIS COURT ORDERS** that the Applicants are authorized and directed to (a) transfer, direct and pay over to the Monitor forthwith and in any event by no later than 4:00 p.m. EST on October 30, 2009, all monies currently held in accounts in the name of and/or controlled by the Applicants; and (b) transfer, direct and pay over to the Monitor forthwith all monies received by the Applicants after the date hereof (all such monies, together with any monies received by the Monitor on behalf of the Applicants, the "**Funds**"), which Funds shall continue to be Property (as defined in the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 (the "**Amended Amended and Restated Initial Order**")) of the Applicants.

3. **THIS COURT ORDERS** that all Persons (as defined in the Amended Amended and Restated Initial Order) in possession or control of Property (as defined in the Amended Amended and Restated Initial Order), including for greater certainty any monies, belonging to or owed to the Applicants shall forthwith advise the Monitor of such and shall grant immediate and continued access to the Property to the Monitor, and shall forthwith deliver all such Property to the Monitor upon the Monitor's request, other than documents or information which may not be disclosed

or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

4. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge and the DIP Lenders Charge shall continue to apply to the Property of the Applicants, including but not limited to the Sale Proceeds (as defined in the Approval and Vesting Order of the Honourable Mr. Justice Campbell dated July 20, 2009 (the "**Approval and Vesting Order**")) and the Funds in accordance with their priority as established by the Amended Amended and Restated Initial Order.

**POWERS OF THE MONITOR**

5. **THIS COURT ORDERS** that the Monitor shall continue to be authorized and directed (a) to complete the Claims Procedure established by the Claims Procedure Order of the Honourable Mr. Justice Morawetz dated July 30, 2009 (the "**Claims Procedure Order**") without consulting with the Applicants; and (b) to take such further steps and seek such amendments to the Claims Procedure Orders or additional orders as the Monitor considers necessary or appropriate in order to fully determine, resolve or deal with any Claims or D&O Claims (as both are defined in the Claims Procedure Order); provided that the procedure for the evaluation and adjudication of D&O Claims shall be developed in consultation with D&O Counsel (as defined in the Claims Procedure Order).

6. **THIS COURT ORDERS** that the Monitor shall continue to be authorized and directed, in the name of and on behalf of the Applicants, and without consultation with the Applicants (a) to take such steps as the Monitor considers necessary or appropriate to complete the transaction contemplated by the agreement of purchase and sale among Indalex Holdings Finance, Inc., Indalex Holding Corp., Indalex Inc., Caradon Lebanon, Inc., Dolton Aluminum Company, Inc., Indalex Limited, Indalex Holdings (B.C.) Ltd. and 6326765 Canada Inc. and SAPA Holding AB made as of June 16, 2009 (the "**Sapa Transaction**"), including the working capital adjustment

provided for therein; and (b) to make any disbursements and pay any costs or expenses as may be incidental to or necessary for the closing of the Sapa Transaction.

7. **THIS COURT ORDERS** that the Monitor is authorized, but not required, in the name of and on behalf of the Applicants, to (a) file any and all tax returns of the Applicants with any governmental tax authority that the Monitor considers necessary or desirable; (b) claim any and all rebates, refunds or other amounts of tax (including sales taxes, capital taxes and income taxes) paid by or payable to the Applicants; (c) exercise any rights and remedies available to the Applicants, including all rights of appeal; and (d) engage, deal, communicate, negotiate, agree and settle with any and all governmental tax authorities on behalf of the Applicants and all such governmental authorities shall treat the Monitor as the authorized representative of the Applicants. Any rebates, refunds or other amounts received by the Monitor on account of taxes paid by or payable to the Applicants shall form part of the Funds.

8. **THIS COURT ORDERS** that the Monitor shall be at liberty to engage such persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

9. **THIS COURT ORDERS** that, in addition to its prescribed rights in the CCAA, the powers granted by the Amended Amended and Restated Initial Order, this Order and all other orders granted in these proceedings, the Monitor is empowered and authorized to take such additional actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary or desirable in order to facilitate the orderly completion of these proceedings and the winding up of the Applicants' estates, including:

- (a) Responding to the leave to appeal motion of the Retired Executives (as defined in the Ninth Report) and any resulting appeal;

- (b) Any matters resulting from the pending decision of the Honourable Mr. Justice Campbell in relation to the Deemed Trust Motions and the Bankruptcy Leave Motion (as those terms are defined in the Ninth Report), including the filing of or responding to any appeal there from and the filing of any assignment in bankruptcy of any Applicant; and
- (c) Investigating the possibility of a restructuring transaction based on the Applicants' tax loss attributes.

10. **THIS COURT ORDERS** that the Monitor shall continue to hold the Sale Proceeds and the Funds, and the Monitor is authorized and directed:

- (a) To comply with its obligations under paragraph 14 of the Approval and Vesting Order;
- (b) To pay the reasonable fees and disbursements of the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the Applicants' directors and officers, in the name of and on behalf of the Applicants;
- (c) To pay all post-filing liabilities properly incurred by the Applicants in the ordinary course of business which have not been previously paid or assumed pursuant to the Transaction, in the name of and on behalf of the Applicants;
- (d) To pay all costs associated with any actions taken by the Monitor pursuant to paragraph 9 of this Order; and
- (e) To return to Court in order to seek such further authority or directions as the Monitor considers appropriate with respect to the distribution of the Sale Proceeds and the Funds.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA, any other applicable legislation or any other order granted in these proceedings.

12. **THIS COURT ORDERS** that, except as specifically provided for herein, nothing in this Order shall vary or amend any order or endorsement previously granted in these proceedings.

**MONITOR'S ACTIVITIES**

13. **THIS COURT ORDERS** that the Eighth Report, the Ninth Report and Tenth Report and the activities of the Monitor as described therein are hereby approved.

**STAY EXTENSION**

14. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Amended Amended and Restated Initial Order, and as extended by Orders granted on April 22, June 19, July 20 and July 30, 2009) is further extended until and including February 5, 2010.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 27 2009

PER / PAR: TV

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.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**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) 861-0445

Lawyers for the FTI Consulting Canada ULC

**TAB # 8.**





R.S.C. 1985 c. C-36, as amended (the "CCAA") pursuant to an order of Morawetz J. (the "Initial Order") Pursuant to the Initial Order, FTI Consulting Canada ULC was appointed as Monitor of the Applicants.

[4] On April 8, 2009, the Initial Order was amended and restated 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 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.")

[5] 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.

[6] On April 22, 2009, this Court granted an Order which, *inter alia*, extended the stay of proceedings to June 26, 2009, and approved a marketing process.

[7] By Order dated July 20, 2009 (the "Approval and Vesting Order"), this 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.

[8] 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.")

[9] 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 under-funded deficiencies be included in the amount retained by the Monitor as Undistributed Proceeds, pending further order of the Court.

[10] 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.

[11] 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.

[12] The approval motion was either supported or unopposed by all parties except for an issue raised on behalf of certain retirees under pension plans of the Company. 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.

[13] Counsel for the retirees objected to the sale on the basis that the liquidation values set forth in the 7<sup>th</sup> Monitor's Report would, it was suggested, provide greater return for unsecured creditors than would the proposed sale. That objection was dismissed on the basis that there was no clear evidence to support the proposition and in any event the transaction as approved did preserve value for suppliers, customers and preserve approximately 950 jobs of the Applicants' plant employees in Canada.<sup>1</sup>

[14] The second objection by certain retirees and employees involves a claim based on a statutory deemed trust said to be in respect of certain funds held by the Monitor proposed to be reserved from the funds for distribution on closing to the DIP Lenders.

[15] At the July 20, 2009 hearing, the Court expressed concern that the position of the retirees and employees, which was brought only at the time of the approval motion, if it were to be dealt with at all, without an adjournment of the approval hearing, should be dealt with promptly as part of the overall approval process.

[16] Following the submissions of counsel, it was agreed that an expedited hearing process on the retirees' and employees' positions would be undertaken promptly, and that the funds on hand with the Monitor would be sufficient if required to satisfy retirees' alleged trust claims.

[17] The motion in respect of the deemed trust came on for hearing on August 28, 2009. The position of the retirees was opposed by the Applicants and the purchaser. Submissions were also made by counsel for the Superintendent under the Ontario *Pension Benefits Act*, R.S.O. 1990 c. P-8 ("*PBA*."). This decision was then reserved pending the November 26, 2009 ruling of the Court of Appeal rendered in *Sproule v. Nortel Networks Corporation*, reported, 2009 ONCA 833.

[18] There are two groups of retired employees at issue in this matter. Those represented by Mr. Hatnay and his colleagues seek a declaration that the amount of \$3.2 million, which represents the wind up liability said to be owing by the Applicants to the Retirement Plan for Executive Employees of Indalex Canada and Associated Companies (the "Executive Plan") and which is currently held in reserve by the Monitor, is subject to the deemed trust for the benefit of the beneficiaries of the Executive Plan under section 57(4) of the *PBA*. The Pensioners further seek an order that such amounts are not distributable to other creditors of the Applicants and are to be paid into the fund of the Executive Plan and that such orders and declarations survive any subsequent bankruptcy of the Applicants.

[19] There were, as of January 1, 2008, eighteen members of the Executive Plan, none of whom are active employees.

<sup>1</sup> Monitor's 7<sup>th</sup> Report, July 15, 2009, p. 13, paragraphs 34(c)(d)

[20] The second group of pension claimants are members of the United Steel Workers, who seek recovery from the sale proceeds based on deemed trust of a pension plan in wind-up of an amount equal to the deficiency in the Retirement Plan for Salaried Employees of Indalex and Associated Companies ("Salaried Plan.") The deficiency in the Salaried Plan is said to be \$1,795,600 as of December 31, 2008.

### The Issues

1. Do the deemed trust provisions of s. 57 and s. 75 of the *PBA* apply to the funds currently held in reserve by the Monitor in respect of:
  - a. The Executive Plan;
  - b. The Salaried Plan?
2. Should the stay currently in place under the *CCAA* be lifted to permit the Applicants to file for bankruptcy under the *BIA*?

[21] There are several differences between the Executive Plan and the Salaried Plan. The Salaried Plan contains both a defined benefit and defined contribution component. Indalex and members of the Salaried Plan were required to make joint contributions to the Salaried Plan.

[22] The Salaried Plan is in the process of being fully wound up with an effective wind-up date of December 31, 2006. No pensions have accrued since that date. The wind-up deficiency in the Salaried Plan at December 31, 2008 was \$1,795,600, has been subject to special payments to deal with that deficiency, of \$709,013 in 2007, \$875,313 in 2008 and \$601,000 in 2009, all of which have been made. The last special payment was scheduled to be made on December 31, 2009.

### The Executive Plan

[23] The Executive Plan has not been wound up. The material filed with the Court exhibits an intention on the part of the Applicants to wind up that Plan. The uncontested evidence of Bob Kavanagh on behalf of the Applicants in his affidavit sworn August 12, 2009 is to the following effect:

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.

[24] The affidavit of Keith Carruthers exhibits a letter of July 13, 2009 on behalf of the Monitor confirming the intention of the Applicants to wind up the Executive Plan in accordance with the provisions of the *PBA*. There are no deficiencies in payments under the Executive Plan as of July 20, 2009. The Executive Plan is not wound up. Given the analysis that follows in respect of the Salaried Plan, I see no basis for a deemed trust of any amount at this time in respect of the Executive Plan.

The Salaried Plan

[25] This motion essentially involves one aspect of the Salaried Plan of Indalex, namely the windup deficiency of the said plan. It is the position of the *CCAA* Applicants that prior to the sale of assets approved on July 20, 2009, all pension payments required under obligation to Indalex employees, both statutory and contractual, were met.

[26] What is at issue here is the requirement for an annual deficiency payment that was established to be made when the Salaried Plan was wound up as at December 31, 2006.

[27] The term "wind up" can be a misnomer unless understood in context. When a pension plan is "wound up," at the effective date it means that no new entrants are permitted. An actuarial calculation is then made of the assets to determine whether, based on certain actuarial assumptions, there will be sufficient monies available at the times required to pay the pension entitlement of employees who have and will retire.

[28] If the assets as of the wind-up date are found to be insufficient, that deficiency will be required to be made up under the *PBA*. As in this case, the Plan may be permitted to have the deficiency rectified in a period of up to five years by annual instalments.

[29] The issue for this Court is whether or not under the *PBA* there is a requirement that the deficiency commencing at the wind up date be paid as at the date of closing of the sale and transfer of assets, namely July 20, 2009.

[30] The issue is to be determined by analysis and application of the provisions of the *PBA*. The sections involved are the following:

- 57.
- (3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.
- (4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of

money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

75

- (1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund,
  - (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
  - (b) an amount equal to the amount by which,
    - (i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Superintendent declares that the Guarantee Fund applies to the pension plan,
    - (ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
    - (iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,
 exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario. R.S.O. 1990, c. P.8, s. 75 (1); 1997, c. 28, s. 200.
- (2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times. R.S.O. 1990, c. P.8, s. 75 (2).

[31] Section 75 of the PBA is amplified by sections of the regulations under the statute \* \* (see R.R.O. 1990 Regulation 909.) Section 28 and the following 144 pages of the Regulation deal with wind-up notices. Section 31(1) and (2) are as follows:

- 31. (1) The liability to be funded under section 75 of the Act shall be funded by annual special payments commencing at the effective date of the wind up and made by the employer to the pension fund. O. Reg. 712/92, s. 19.
- (2) The special payments under subsection (1) for each year shall be at least equal to the greater of,
  - (a) the amount required in the year to fund the employer's liabilities under section 75 of the Act in equal payments, payable annually in advance, over not more than five years; and
  - (b) the minimum special payments required for the year in which the plan is wound up, as determined in the reports filed or submitted under sections 3, 4, 5.3, 13 and 14, multiplied by the ratio of the basic Ontario liabilities of the plan to the total of the liabilities and increased liabilities of the plan as determined under clauses 30 (2) (b) and (c). O. Reg. 712/92, s. 19.

[32] The most pertinent of all of these sections are 57(4) and 75(2), as they apply to this windup situation. The submission on behalf of the Superintendent distinguished between the words "due" and "accruing due." The assertion is that the word "accrue" must be given meaning. The meaning suggested is that by virtue of the inclusion of the word "accrue," the remaining deficiency payments become payable since they fall within the deemed trust provisions.

[33] The distinction to be made between amounts that are accruing and amounts that are due is that, in the case of an amount accruing, it is not yet payable, while generally an amount that is due is payable.

[34] The deemed trust provision of s. 57(4) requires the employer to accrue "to the date of the windup but not yet due." The windup in this case is December 31, 2006. In my view the section

contemplates the calculation to be made as of the date of wind-up of the amounts required to make up the deficiency. If, as here, the regulator permits that deficiency to be made up over a period of years, the amount of the yearly payments does not become due until it is required to be paid. It is "payable annually in advance."

[35] In *Re Ganong Estate; Ganong v Belyea*, [1941] S.C.R. 125, it was held:

...the words 'all dividends accrued due' can surely only mean dividends which have become payable by the corporation to the shareholder, as the words "dividends accruing due" during any stated period can only mean dividends as they become payable by the corporation to the shareholder.

The court went on to say:

How can these dividends possibly be said to have 'accrued due' or to be 'accruing due' when no profits have been earned to provide for their payment and no declaration has been made by the directors fixing any date therefor? The shareholders acquire no right to payment of any dividends until there are net profits, out of which alone they can be paid and until such time as the directors determine they shall be paid.

[36] The use of the word "accrue" connotes the ability to calculate a precise amount of money. The word "due" connotes that it is payable whether or not the time for payment has arrived. See *Black's Law Dictionary*, 6<sup>th</sup> ed., The West Group at p. 499, where it is noted that with respect to the word "due," "it imports a fixed and settled obligation or liability but with reference to the time for its payment, there is considerable ambiguity in the use of the term."

[37] In *Toronto Dominion Bank v. Usarco Ltd.*, [1991] 42 E.T.R. 235, Ont. C.J. (Gen. Div.), Farley J. dealt with the deemed trust provisions under what is now section 57(4) of the *PBA* in a context in which a declaration was sought prior to a bankruptcy petition. He said at paragraph 26:

It therefore appears to me that the deemed trust provisions of subs. 58(3) and (4) only refer to the regular contributions together with those special contributions which were to have been made but were not. In this situation, that would be the regular and special payments that should have been made but were not (as reflected in the report of December 31, 1988), together with any regular or special payments that were scheduled to have been made by the wind-up date, July 13, 1990, but were not made. This is contrasted with the obligation of Usarco to fully fund its pension obligations as of the wind-up date pursuant to s. 76(1). It is recognized in these circumstances, however, that the bank will have a secured position which will prevail against these additional obligations as to the special payments, which have not yet been required to be paid into the fund. Sadly, it is extremely unlikely there will be a surplus after taking care of the bank to allow the pension fund to be fully funded for this (the likelihood being that the wind-up valuation of assets and liabilities of the pension fund will show a deficiency.)

[38] The issue was dealt with again in *Ivaco Inc. Re.* [2006] 25 C.B.R. [5th] 176. (Ont. C.A.), J. Laskin J.A. speaking for the Court of Appeal noted at paragraph 38 that "in a series of cases, the Supreme Court of Canada has repeatedly said that a province cannot, by legislating a deemed trust, alter the scheme of priorities under the federal statute."

[39] Paragraph 44 of that decision states:

At para. 11 of his decision, the motions judge said that both unpaid contributions and wind-up liabilities are deemed to be held in trust under s. 57(3). In his earlier decision in *Toronto-Dominion Bank v. Usarco* (1991), 42 E.T.R 235, Farley J. said, at para. 25, that the equivalent legislation then in force under the *Pension Benefits Act, 1987*, S.O. 1987, c.35 referred only to unpaid contributions, not to wind-up liabilities. I think that the statement in *Usarco* is correct, but I do not need to resolve the issue on this appeal.

[40] In the text "Essentials of Canadian Law-Pension Law" (Toronto: IrwinLaw, 2006) author Ari N. Kaplan at page 396 states:

The *PBA* does not expressly state whether a funding deficiency on the wind up of a pension plan is secured by the deemed trust, but it appears that the deemed trust is intended to apply to the deficiency to the extent it relates to employer contributions and remittances due and owing to the pension fund on wind up, but which have not been paid."

[41] The author goes on in the next paragraph:

The deemed trust does not extend to the obligation of an employer to fund pension obligations that have not yet become due or which "crystallize" only upon the windup of the pension plan.

The *Usarco* decision referred to above is the foundation for that statement.

[42] In his paper given at an Insight Conference, "Pension Management in Insolvency and Restructuring: What Is At Stake?" September 20, 2005, Gregory J. Winfield at page 29 states:

Of particular note to secured creditors will be the fact that the courts have determined that the deemed trust created under that *OPBA* does not extend to the unfunded pension liability upon the windup of the plan, but is limited to the outstanding unremitted contributions that are past due plus those arising in respect of the stub period. Accordingly while the entirety of the pension fund shortfall remains an obligation of the employer, and an obligation exists under the *OPBA* to fund this deficiency over a period not exceeding five years from the date of wind up, at present this is an unsecured claim on the assets of the debtor." [Reference omitted]

[43] The difficulty in reconciling the requirements of the pension statute with the regime of the *CCAA* is that a company such as Indalex is entitled to carry on business and to make payments in the ordinary course of such business including those that may be required under the initial order which may well, as here, include certain ongoing pension obligations while in *CCAA*.

[44] Were it not for the provisions in s. 31 of the Regulations, Indalex would have had under s. 75 of the *PBA* to pay in as of the date of wind-up any Plan deficiency. Section 31 of the Regulation as anticipated in s. 75 of the Act spreads that into five equal annual instalments.

[45] One obvious purpose behind the provision in s. 31 of the Regulation is to ease the burden on the Company to enable it to have the funds to operate its normal business operations while it earns the revenue to make up the deficiency.

[46] The pension issues that have arisen given the nature of the recent recession, as here, are often complex and pit as adversaries creditors of a corporation who most often having advanced funds under security which creditors assert give them priority as to the repayment, as against employees many of whom are long-term or even retired who have seen the assets supporting their pensions decrease in value, risking the payments to which the employees are otherwise entitled by the terms of the plan of which they are members.

[47] In circumstances such as this, the Court does not have the mandate to exercise the discretion to do what it or any group might consider fair and equitable. The federal insolvency legislation in force (the *CCAA* and *BIA*) provide schemes of priority among creditors commencing with those who have security over the assets of the company. Pitted against those



with security are those unsecured creditors who must share in whatever is left over after the secured creditors are paid.

[48] Employees or retired employees are entitled to pensions in accordance with the contractual terms of their pension plan. In certain circumstances those contractual terms will be augmented by the provisions of the *PBA* to the extent that they do not conflict with federal insolvency legislation. In some of these circumstances, a "deemed trust" will arise.

[49] In this case I have concluded there is no conflict between the federal and provincial legislation. I find that as of the date of closing and transfer of assets there were no amounts that were "due" or "accruing due" on July 20, 2010. On that date, Indalex was not required under the *PBA* or the Regulations thereunder to pay any amount into the Plan. There was an annual payment that would have become payable as at December 31, 2009 but for the stay provided for in the Initial Order under the *CCAA*.

[50] Since as of July 20, 2009, there was no amount due or payable, no deemed trust arose in respect of the remaining deficiency arising as at the date of wind-up.

[51] Since under the initial order priority was given to the DIP Lenders, they are entitled to be repaid the amounts currently held in escrow. Those entitled to windup deficiency remain as of that date unsecured creditors.

**Motion To Lift Stay**

[52] The Applicants and Indalex US, in addition to disputing the validity of the deemed trust claim, sought to file a voluntary assignment in bankruptcy to ensure the priority regime they urged as the basis for resisting the deemed trust.


[53] In support of that position, it was urged that since the Applicants no longer carried on business, have no active employees and no tangible assets apart from tax refunds (other than the cash sale proceeds associated with the above motion), and no directors (they having resigned), an assignment in bankruptcy is appropriate. The stay granted under the Initial Order, it is urged, should be lifted for that purpose.

[54] The decision on the voluntary assignment was reserved pending a decision in the main motion above, since to allow the bankruptcy to proceed might have deprived employees of an argument under the *CCAA*.

[55] Given that disposition, the question of bankruptcy assignment might well be moot. In my view, a voluntary assignment under the *BIA* should not be used to defeat a secured claim under valid Provincial legislation, unless the Provincial legislation is in direct conflict with the provisions of Federal Insolvency Legislation such as the *CCAA* or the *BIA*. For that reason I did not entertain the bankruptcy assignment motion first.

[56] I conclude that it is not necessary to deal with the issue of the voluntary assignment, at least on the basis sought by the Applicants at this time. I did not find conflict between the federal and provincial regimes.

[57] Should the Applicants wish to renew the request for bankruptcy relief, the motion can be scheduled through the Commercial List.

  
C. CAMPBELL J.

Released: Feb 18, 2010

CITATION: Re Indalex 2010 ONSC 1114  
Court File No. 05-CL-5880  
Date: 20100218

**SUPERIOR COURT OF JUSTICE  
ONTARIO  
(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")

---

REASONS FOR DECISION

---

**C. CAMPBELL J.**

**RELEASED:** February 18, 2010

**TAB # 9.**

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.

Applicants

COURT OF APPEAL FOR ONTARIO

BEFORE O'CONNOR A.C.J.O. CRONK J.A. Watt J.A.

MAR 24 2010

POSITION OF MOTION

*leave to appeal denied. costs to  
the respondent fixed with amount  
of 750.00 inclusive.*

*[Signature]*  
*E.A. Chank J.A.*  
*Daniel Chank J.A.*

Court of Appeal File No. M37813  
Superior Court File No: CV-09-8122-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

MOVING PARTIES' MOTION RECORD  
(VOLUME 1 OF 2)

(Motion for Leave to Appeal)

**KOSKIE MINSKY LLP**  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

**Andrew J. Hatnay** (LSUC# 31885W)  
Tel: 416-595-2150  
Fax: 416-204-2872  
Email: [ahatnay@kmlaw.ca](mailto:ahatnay@kmlaw.ca)

**Demetrios Yiokaris** (LSUC# 45852L)  
Tel: 416-595-2130  
Fax: 416-204-2810  
Email: [dyiokaris@kmlaw.ca](mailto:dyiokaris@kmlaw.ca)

Lawyers for Keith Carruthers, Leon Kozierek,  
Bertram McBride, Max Degen, Eugene  
D'Iorio, Richard Smith, Robert Leckie and Neil  
Fraser (the "SERP Group")

296

**TAB # 10.**

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

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

**TWELFTH REPORT OF THE MONITOR  
April 28, 2010**

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.

TWELFTH 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 ("FTI Canada" or 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 May 7, 2010 pursuant to the Order of the Honourable Mr. Justice Campbell granted February 5, 2010.
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 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").
11. 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 Claim Procedure;
  - (b) Completing the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction;
  - (c) Responding to the leave to appeal motion of the Retired Executives in connection with the SERP Motion and any resulting appeal; and
  - (d) Responding to any matters resulting from the pending decision of Justice Campbell in relation to the Deemed Trust Motions and the Bankruptcy Leave Motion, including the filing of or responding to any appeal there from and the filing of any assignment in bankruptcy of any Applicant.

**PURPOSE OF REPORT**

12. The purpose of this, the Monitor's Twelfth Report, is to inform the Court on the following:
- (a) The status of the motion for leave to appeal following from the SERP Decision (as defined herein);
  - (b) The status of the Deemed Trust Motions and the Bankruptcy Leave Motion;
  - (c) The secured claim of Sun Indalex Finance, LLC;
  - (d) The status of the Claims Procedure;
  - (e) The status of the SAPA Transaction Working Capital Calculation; and
  - (f) The request for an extension of the Stay Period until August 6, 2010.
13. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars. Capitalized terms not otherwise defined herein have the meanings defined in prior Monitor's Reports. Copies of the prior Monitor's Reports and the other materials filed with the Court can be obtained from the Monitor's website at: <http://cfcanda.fticonsulting.com/indalex/>.

**THE SERP MOTION**

15. On July 2, 2009, the Retired Executives brought a motion before Justice Morawetz seeking an order requiring the Applicants to reinstate payment of certain supplemental pension benefits (the "SERP Payments") retroactive to April 2009. Justice Morawetz found, *inter alia*, that (a) the SERP Payments are pre-filing unsecured obligations; (b) breach of the obligation to make the SERP Payments gives rise to an unsecured claim; and (c) the Retired Executives are stayed from enforcing these payment obligations (the "SERP Decision").
16. On July 17, 2009, the Retired Executives filed a Notice of Motion with the Ontario Court of Appeal seeking leave to appeal the SERP Decision. The Retired Executives filed their motion record and factum for the leave to appeal motion on January 13, 2010. The Monitor, on behalf of the Applicants, filed responding material on February 8, 2010. The Retired Executives filed their reply factum on February 18, 2010.
17. On March 24, 2010, the Ontario Court of Appeal denied the Retired Executives' motion for leave to appeal.

**DEEMED TRUST MOTIONS AND BANKRUPTCY LEAVE MOTION**

18. On August 28, 2009, certain retired executives of the Applicants (the "Retired Executives") and certain members of the United Steelworkers Union (the "USW") brought motions seeking declarations that property of the Applicants is subject to deemed trusts in favour of the beneficiaries of the "Executive Pension Plan" and the "Salaried Pension Plan", respectively (the "Deemed Trust Motions").
19. 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").

20. 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.
21. On March 5, 2010, the Retired Executives and the USW each filed a Notice of Motion for leave to appeal the Deemed Trust Decision. The moving parties filed their motion records, facts and books of authorities on March 24, 2010 and the Monitor, on behalf of the Applicants, filed a responding factum and book of authorities on April 14, 2010. The Retired Executives and the USW filed a joint reply factum on April 21, 2010.
22. A decision on the Retired Executive's and the USW's leave motions is expected before the end of May 2010.

#### SECURED CLAIM OF SUN INDALEX FINANCE, LLC

23. As reported in the Monitor's Seventh and Eighth Reports, Sun Indalex Finance, LLC ("Sun") advised the Monitor that it intended to file a secured claim against Indalex based upon an alleged cross-guarantee from Indalex (the "Sun Claim"). The Monitor requested that Sun provide details of the Sun Claim. Sun provided such details and filed a Proof of Claim with the Monitor on August 28, 2009.
24. At the time of the Applicants' CCAA filing, the Applicants were parties to an Amended and Restated Credit Agreement dated as of May 21, 2008, among the Applicants, the US Debtors, certain Revolving Lenders, Sun as Term Lender and JP Morgan as Administrative Agent, as amended (the "Credit Agreement").

25. A detailed description of the Credit Agreement, the provision of guarantees and the grant of security pursuant thereto, and the terms of the forbearance described hereinafter is set forth in the affidavit of Timothy R.J. Stubbs sworn April 3, 2009 and filed in support of the CCAA Proceedings. A copy of the Stubbs affidavit is available on the Monitor's Website at: <http://cfcanada.fticonsulting.com/indalex/>.
26. Pursuant to the Credit Agreement, the US Debtors received a \$30 million term loan and had access to a \$200 million revolving credit facility. The Applicants had access to a revolving credit sub-facility of up to \$80 million.
27. The obligations of Indalex under the Credit Agreement were guaranteed by the other Applicants as well as certain of the US Debtors. Indalex's obligations under the Credit Agreement were secured in Canada by a Security Agreement, two Deeds of Hypothec, together with certain other debentures, pledge agreements and security documents (the "Canadian Security"). Prior to March 6, 2009, the obligations of the U.S. borrower under the Credit Agreement were guaranteed by the US Debtors, but not the Applicants.
28. On March 6, 2009, the Applicants and the US Debtors entered into a Forbearance Agreement with the Administrative Agent, the Revolving Lenders and Sun. Pursuant to the Forbearance Agreement, the Applicants, *inter alia*, agreed to grant security in support of the obligations of the US Debtors, including the Term Loan, and the Canadian Security was subsequently amended to give effect to such agreement.
29. The Monitor has reviewed the Sun Claim and is satisfied that the Sun Claim represents a valid secured claim against the Applicants the quantum of which is yet to be determined.

**STATUS OF CLAIMS PROCEDURE**

30. In accordance with the Claims Procedure, a Proof of Claim and a copy of the Claims Procedure were sent to each Known Creditor on August 4, 2009, the Notice to Creditors was published in the Globe and Mail on August 6, 2009 and in the Wall Street Journal on August 7, 2009, and a copy of the Notice to Creditors was posted on the Monitor's Website.
31. Any person wishing to assert a Claim or D&O Claim (as those terms are defined in the Claims Procedure Order) was required to submit their Proof of Claim or Proof of D&O Claim, with all relevant supporting documentation, by the Claims Bar Date of 5:00 p.m. (Toronto time) on August 28, 2009.
32. A determination as to the validity of unsecured Claims is being held in abeyance pending a determination as to whether there will be funds to distribute to such creditors, which in turn depends on the final adjustments to the Canadian Purchase Price, as discussed later in this report, and on the outcome of the motions for leave to appeal the Deemed Trust Decision.
33. The Monitor received 17 D&O Proofs of Claim by the Claims Bar Date. The Monitor has received no additional D&O Proofs of Claims. The Monitor has reviewed the 17 D&O Proofs of Claim submitted by various individuals, the Official Unsecured Creditors Committee in the Ch.11 Proceedings and Revenue Quebec against the directors and officers of the Applicants, and has discussed the D&O Claims with counsel to those individuals who were directors and officers of the Applicants during the CCAA Proceedings.
34. Based on its review of the D&O Claims filed, the Monitor formed the opinion, subject to the outcome of the Retired Executive's motion for leave to appeal and possible appeal of the SERP Decision, that the D&O Claims are not covered by the Directors' Charge (as defined in the Amended Amended and Restated Initial Order of Justice Morawetz dated May 12, 2009). Now that the motion for leave to appeal the SERP Decision has been dismissed, the Monitor will be bringing a

motion seeking such a declaration and an order releasing the Directors' Charge.

#### SAPA TRANSACTION WORKING CAPITAL CALCULATION

35. The Sapa Transaction closed in Canada and the U.S. on July 31, 2009. The Canadian Cash Purchase Price paid by the Purchaser was \$30,902,000, subject to further adjustment in accordance with the provisions of the Asset Purchase Agreement. On Closing, the Canadian Cash Purchase Price was disbursed as follows:

	\$
Cure Costs	445,926
Legal & Professional Fees	1,322,010
Repayment of DIP Lending	17,041,392
Canadian Escrow	2,750,000
Reserves held by Monitor	9,342,672
<b>Canadian Cash Purchase Price</b>	<b>30,902,000</b>

36. Pursuant to the Asset Purchase Agreement, the Canadian Cash Purchase Price will be adjusted based on the difference between the amount of the Canadian Current Assets and Canadian Assumed Liabilities as estimated in the Estimated Closing Date Statements and as calculated as at the Closing Date in the Closing Date Statements, subject to a maximum adjustment in the Purchaser's favour equal to the Canadian Escrow amount, being \$2.75 million.
37. The Asset Purchase Agreement provides for a timetable for the determination of adjustments. The timetable has been extended a number of times.
38. The Monitor is authorized and directed by the Monitor's Powers Order to take such steps as the Monitor considers necessary or appropriate to complete the Sapa Transaction, including the working capital adjustment, in the name of and on behalf of the Applicants. Sun is authorized by order of the US Court in the Ch.7 Proceedings to negotiate the working capital adjustments on behalf of the US Sellers.



- 39. The Monitor and its counsel met with Sapa and Sun and their counsel in New York on December 18, 2009 in an effort to settle the working capital calculations and the final purchase price adjustments. While a settlement was not reached at that time, the foundation of a possible settlement was negotiated. Since that meeting the Monitor and its counsel have continued negotiations with Sun and its counsel and have agreed to a settlement. The settlement remains subject to obtaining the agreement of Sapa and sign off from the US Chapter 7 Trustee. That process is underway and is subject to certain deadlines negotiated between the Monitor and Sun.
- 40. At this time, the Monitor anticipates that the final working capital adjustment will result in recovery by the Applicants of the entire \$2.75 million deposit currently held in escrow pending completion of the working capital calculation plus an additional amount.

**EXTENSION OF THE STAY PERIOD**

- 41. The Stay Period currently expires on May 7, 2010. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including the finalization of the working capital calculation and the final purchase price adjustment pursuant to the Sapa Transaction, dealing with the Directors' Charge, and responding to the appeal of the Deemed Trust Decision should leave to appeal be granted. The continuation of the stay of proceedings is necessary to provide for the stability required during that time. Accordingly, the Monitor is seeking an extension of the Stay Period to August 6, 2010.
- 42. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by such an extension and that circumstances exist that make an extension of the Stay Period appropriate.
- 43. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay period to August 6, 2010.

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

Dated this 28th day of April, 2010.

FTI Consulting Canada ULC  
in its capacity as the Monitor of  
Indalex Limited, Indalex Holdings (B.C.) Ltd.,  
6326765 Canada Inc. and Novar Inc.



Nigel D. Meakin  
Senior Managing Director

**TAB # 11.**



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	THURSDAY, THE 5 <sup>TH</sup> DAY
	)	
JUSTICE LEDERMAN	)	OF AUGUST, 2010

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  
(Stay Extension)

**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 an order extending the Stay Period (as defined below) and an order approving the Thirteenth Report of the Monitor and the activities of the Monitor described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Thirteenth Report of the Monitor dated July 19, 2010 (the "Thirteenth Report"), and on hearing the submissions of counsel to the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

**SERVICE**

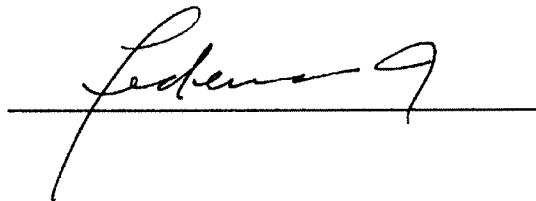
1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged, if necessary, and that the motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby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

**MONITOR'S ACTIVITIES**

1. THIS COURT ORDERS that the Thirteenth Report and the activities of the Monitor as described therein are approved.

**STAY EXTENSION**

2. THIS COURT ORDERS that the Stay Period (as defined in paragraph 15 of the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009) is extended until and including January 31, 2011.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG 05 2010

PER / PAR: JSA

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.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**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  
**Lesley Mercer LSUC#: 54491E**  
Tel: (416) 869-6859  
Fax: (416) 861-0445

Lawyers for the Monitor

311

**TAB # 12.**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR ) WEDNESDAY, THE 10<sup>TH</sup> DAY  
 )  
JUSTICE CAMPBELL ) OF NOVEMBER, 2010

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  
(Discharge of Directors' Charge)

**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 an Order: (a) declaring that none of the D&O Claims filed with the Monitor are claims for which the Applicants are required to indemnify their directors and officers pursuant to paragraph 21 of the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 (the "**Initial Order**"); and (b) terminating, discharging and releasing the Directors' Charge, was heard this day at 330 University Avenue, Toronto, Ontario.



ON READING the Motion Record and Factum of the Monitor, and the Responding Motion Record and Factum of certain retired executives (the “Retirees”), and on hearing the submissions of counsel to the Monitor, the Retirees, the United Steelworkers and such other counsel as were present, and on being advised that the Service List (including all D&O Claimants and counsel to the directors and officers) was served with the Motion Record and Factum herein:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record and Factum 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.

**DEFINED TERMS**

2. **THIS COURT ORDERS** that any defined terms used, but not otherwise defined herein shall have the meanings ascribed to such terms in the Claims Procedure Order of the Honourable Mr. Justice Morawetz dated July 30, 2009.

**D&O CLAIMS**

3. **THIS COURT ORDERS AND DECLARES** that none of the D&O Claims received by the Monitor as set forth in the Proofs of D&O Claims attached as Exhibits to the Affidavit of Kaitlin Brown sworn October 13, 2010, filed, are claims for which the Applicants are required to indemnify their directors and officers pursuant to paragraph 21 of the Initial Order.

**DIRECTORS' CHARGE**

4. **THIS COURT ORDERS** that the Directors' Charge (as defined in and created by paragraph 22 of the Initial Order) is terminated, discharged and released.

**LIFT OF STAY**

5. **THIS COURT ORDERS** that the stay of proceedings in favour of the former, current or future directors or officers of the Applicants established by paragraph 20 of the Initial Order, and extended by subsequent orders thereto, is lifted for the sole purpose of allowing those D&O Claimants that filed D&O Proofs of Claim with the Monitor by the Claims Bar Date to commence or continue proceedings against the directors and officers of the Applicants solely in relation to those D&O Claims received by the Monitor by the Claims Bar Date.

---

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.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**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

**Lesley Mercer** LSUC#: 54491E  
Tel: (416) 869-6859  
Fax: (416) 861-0445

Lawyers for the Monitor

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.

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF KAITLIN BROWN**  
**(SWORN OCTOBER 13, 2010)**

**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

**Lesley Mercer LSUC No.: 54491E**  
Tel: (416) 869-6859  
Fax: (416) 947-0866

Lawyers for the Monitor

316

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.

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

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

Proceeding commenced at Toronto

**MOTION RECORD  
(RETURNABLE NOVEMBER 10, 2010)**

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

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236  
**Lesley Mercer** LSUC#: 54491E  
Tel: (416) 869-6859  
Fax: (416) 947-0866

Lawyers for the Monitor