

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

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

**NINTH REPORT OF THE MONITOR  
August 26, 2009**

**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.

**NINTH 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 has been assigned to Judge Walsh.
3. The Stay Period has been extended a number of times and currently expires October 30, 2009 pursuant to the Order of the Honourable Mr. Justice Campbell granted July 30, 2009 (the "**July 30 Order**").
4. On April 8, 2009, the Honourable Mr. 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.
5. On April 22, 2009, the Honourable Mr. Justice Morawetz granted an Order which, *inter alia*, approved the Marketing Process.

6. On July 2, 2009, the Honourable Mr. Justice Morawetz granted an Order which approved the Stalking-Horse Bid as a Qualified Bid under the Stalking Horse Process and the Bidding Procedures.
7. 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 Holding AB ("**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 the Honourable Mr 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 current and former directors and officers of the Applicants (the "**Claims Procedure**") was approved pursuant to the Order of the Honourable Mr Justice Campbell.
9. The purpose of this report is to inform the Court on the following:
  - (a) The closing of the Sapa Transaction;
  - (b) The current status of the Claims Procedure;

- (c) The motions filed by certain former executives of the Applicants (the “**Retired Executives**”) seeking a determination that property of the Applicants is subject to a deemed trust in favour of the beneficiaries of the Executive Pension Plan (the “**Executive Deemed Trust Motion**”) and by the United Steelworkers Union (the “**USW**”) for a determination that the property of the Applicants is subject to a deemed trust in favour of the beneficiaries of the Salaried Pension Plan (the “**Salaried Deemed Trust Motion**”, and together with the Executive Deemed Trust Motion, the “**Deemed Trust Motions**”), and the Monitor’s limited recommendations thereon;
  - (d) The Applicants’ 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**”) and certain transition issues that arise in the event that the Bankruptcy Leave Motion is granted, and the Monitor’s recommendations thereon.
10. 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.

11. 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 the Amended and Restated Initial Order, the Asset Purchase Agreement, the Claims Procedure or prior Monitor's Reports. Prior Monitor's Reports and other public documents filed in the CCAA Proceedings are available on the Monitor's Website at <http://cfcanada.fticonsulting.com/indalex/>.

#### **THE CLOSING OF THE SAPA TRANSACTION**

12. 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.
13. Pursuant to the Asset Purchase Agreement, the Canadian Cash Purchase Price will be adjusted to the extent that the Closing Date Statements differ from the Estimated Closing Date Statements, subject to a maximum adjustment in the Purchaser's favour equal to the Canadian Escrow amount, being \$2.75 million. The Closing Date Statements are to be delivered by the Purchaser not later than sixty days following the Closing Date, with the Sellers having twenty days after receipt to object.
14. 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>

15. As at the date of this report, in addition to the amounts currently being held by the Monitor, the Applicants have approximately \$1.6 million of cash and GST refunds owing of approximately Cdn\$1.2 million.

#### **THE CURRENT STATUS OF THE CLAIMS PROCEDURE**

16. 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.
17. The Claims Bar Date is 5:00 p.m. (Toronto time) on August 28, 2009.

#### **THE DEEMED TRUST MOTIONS**

18. In summary, the Executive Deemed Trust Motion seeks:
  - (a) A declaration that Cdn\$3.2 million of the funds being held by the Monitor is subject to a deemed trust for the benefit of the beneficiaries of the Executive Plan under section 57(4) of the Ontario *Pensions Benefits Act*, R.S.O. c. P. 8 and shall be paid into the fund of the Executive Plan, that such amounts are not distributable to other creditors and that such declarations survive any bankruptcy of the Applicants; and
  - (b) In the alternative, an Order directing the Monitor to pay Cdn\$3.2 million from the monies it is holding to the fund of the Executive Plan.
19. In summary, the Salaried Deemed Trust Motion seeks an Order:
  - (a) That Indalex account for and repay any deficiency in the Salaried Plan; and

- (b) That Indalex holds funds in trust for the beneficiaries of the Salaried Plan equivalent to the amount of the deficiency in the Salaried Plan and that such funds not be distributed to any creditor of Indalex or its affiliates.
20. As previously reported, a timetable for the hearing of the Deemed Trust Motions was set at a 9:30 appointment before Mr. Justice Campbell on July 27, 2009 and is summarized as follows:
- (a) Service of moving parties' motion records by August 5, 2009;
  - (b) Service of any responding motion record by August 12, 2009;
  - (c) Service of any reply motion records by August 14, 2009;
  - (d) Any cross-examinations to be carried out by August 19, 2009;
  - (e) Service of the moving parties' facta by August 20, 2009;
  - (f) Service of the responding party's factum by August 24, 2009;
  - (g) Service of any reply facta by August 26, 2009; and
  - (h) Hearing of the motion on August 28, 2009.
21. As of the date of this report, the parties have complied with the foregoing timetable.
22. The amount of Cdn\$3.2 million which the Executive Deemed Trust Motion seeks to have paid into the Executive Plan is derived from a letter provided by Morneau Sobeco at the request of counsel to the Retired Executives, which letter was filed as Exhibit G to the affidavit of Andrea MacKinnon sworn July 16, 2009, and filed in the CCAA Proceedings (the "**Morneau Letter**").



23. The Monitor notes that the Morneau Letter is subject to a number of caveats and qualifications and expressly states that the amount of Cdn\$3.2 million is a “rough estimate” of the wind-up deficiency of the Executive Plan.
24. Counsel to the Retired Executives and counsel to the USW have each informed the Monitor that they are not seeking to have the deemed trusts rank ahead of the Administration Charge. Based on those representations, the Monitor takes no position on the Deemed Trust Motions, other than to note that it is the Monitor’s view that if this Honourable Court were to grant the Deemed Trust Motions any payments to the pension plans on account of the wind-up deficiencies should be based on full and up to date actuarial valuations to ensure that the appropriate amounts are paid to the pension plans and to avoid any potential prejudice to a party that may arise from paying an amount based on a “rough estimate”.

## **THE BANKRUPTCY LEAVE MOTION AND TRANSITION ISSUES**

### **THE BANKRUPTCY LEAVE MOTION**

25. The Applicants seek 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 affidavit of Keith Cooper sworn August 24, 2009, and filed in support of the Bankruptcy Leave Motion, clearly indicates that, although the Applicants dispute the claimed deemed trusts, the reason for filing the assignment(s) in bankruptcy is to provide certainty that the claimed deemed trusts are extinguished.
26. Subject to the following comments on certain transition issues arising in the event that the Bankruptcy Leave Motion is granted, the Monitor takes no position on the Bankruptcy Leave Motion.

## TRANSITION ISSUES

### *Claims Procedure*

27. Pursuant to the Claims Procedure Order, the Monitor is authorized to administer the Claims Procedure. In order to avoid confusion amongst creditors, avoid the need for creditors to file duplicate claims in any bankruptcy and minimize costs to the estate, the Monitor recommends that the adjudication of claims be completed by the Monitor in accordance with the Claims Procedure.
28. The Monitor further recommends that should it be necessary (i.e. there are adequate assets to fund a distribution to unsecured creditors) then at the appropriate time the Monitor and the trustee in bankruptcy seek appropriate orders to deem the Claims Procedure Order to be an order made in the bankruptcy proceedings thereby removing the need for the trustee to send proof of claim forms to creditors and for creditors to file additional proofs of claim.

### *The Sapa Transaction*

29. Pursuant to the provisions of the Asset Purchase Agreement, a number of matters remain to be dealt with post-closing, including agreeing to the allocation of the Canadian Purchase Price, finalizing the Closing Date Statements, finalizing any adjustments to the Canadian Cash Purchase Price based on the Closing Date Statements and releasing the Canadian Escrow amount as appropriate.
30. Pursuant to the Approval and Vesting Order and the July 30 Order, the Monitor was authorized and empowered, in the name of and on behalf of the Applicants to take such acts as the Monitor deemed necessary and appropriate to give effect to, evidence or document the Transaction and to pay any costs and expenses as may be incidental and necessary to the closing of the Sapa Transaction.
31. The Monitor recommends that it continue to be authorized to take such steps on behalf of the Applicants as are necessary to finalize all remaining matters in respect of the Asset Purchase Agreement.

***Sale Proceeds and Payments Therefrom***

32. Pursuant to paragraph 14 of the Approval and Vesting Order, the Monitor is holding the remaining Sale Proceeds and is authorized to make Distributions (as defined in paragraph 14 of the Approval and Vesting Order) on account of amounts owing which are secured by the DIP Lenders' Charge.
33. The total amount owing by the Applicants under the DIP Credit Agreement at closing was \$27,292,639.02. Of this amount, \$17,041,391.80 was paid from the Canadian Cash Purchase Price. The balance of \$10,751,247.22 was paid by the US Debtors. Accordingly, pursuant to paragraph 14 of the Approval and Vesting Order, the US Debtors have a subrogated claim against the Applicants in the amount of \$10,751,247.22 which claim is secured by the DIP Lenders' Charge.
34. The Monitor recommends that it continue to be authorized to complete these payments. In addition, the Applicants incurred a number of post-filing liabilities in the ordinary course of business or directly related to the CCAA Proceedings which have not yet been satisfied. The Monitor recommends that it be authorized to pay these amounts from the Sale Proceeds prior to any Property of the Applicants, including the Sale Proceeds, being paid to any trustee in bankruptcy which may be appointed.

***Trustee Fees and Disbursements***

35. The Applicants have requested that FTI Canada or its affiliate consent to be named as trustee in bankruptcy in the event that the Bankruptcy Leave Motion is granted. In the Monitor's view, in the circumstances, any trustee in bankruptcy that is asked to consent to be named in an assignment will require a retainer to cover its potential fees and expenses. Accordingly, the Monitor recommends that an Order be granted authorizing the payment from the Sale Proceeds of a retainer of \$75,000 to any trustee named in an assignment in bankruptcy filed by the Applicants.

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

Dated this 26<sup>th</sup> day of August, 2009.

FTI Consulting Canada ULC  
in its capacity as the Monitor of  
Indalex Limited, Indalex Holdings (B.C.) Ltd.,  
6326765 Canada Inc. and Novar Inc.

A handwritten signature in black ink, appearing to read 'N. Meakin', written in a cursive style.

Nigel D. Meakin  
Senior Managing Director