

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

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

**TWENTY-SECOND REPORT OF THE MONITOR**

**October 25, 2013**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
INDALEX LIMITED  
INDALEX HOLDINGS (B.C.) LTD.  
6326765 CANADA INC. and  
NOVAR INC.

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

**INTRODUCTION**

1. On April 3, 2009, Indalex Limited (“**Indalex**”), Indalex Holdings (B.C.) Ltd. (“**Indalex BC**”), 6326765 Canada Inc. (“**632**”) and Novar Inc. (“**Novar**”) (collectively, the “**Applicants**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the “**CCAA**”) and an Initial Order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009 (the “**Stay Period**”), and appointing FTI Consulting Canada ULC as monitor (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. Indalex’s parent is Indalex Holding Corp. (“**Indalex Holding**”), which is a wholly-owned subsidiary of Indalex Holdings Finance, Inc. (“**Indalex Finance**”). Indalex BC, 632 and Novar are wholly-owned subsidiaries of Indalex. On March 20, 2009, Indalex Holding, Indalex Finance, Indalex Inc., Caradon Lebanon, Inc. and Dolton Aluminum Company, Inc. (collectively, the “**US Debtors**”) commenced proceedings (the “**Ch. 11 Proceedings**”) under chapter 11 of the United States Bankruptcy Code (the “**US Code**”) in the United States Bankruptcy Court, District of Delaware (the “**US Court**”). The case was assigned to Judge Walsh.

3. The Stay Period has been extended a number of times and currently expires on October 31, 2013.
4. The Initial Order was amended and restated on April 8, 2009 to, *inter alia*, authorize the Applicants to exercise certain restructuring powers and authorize Indalex to borrow funds pursuant to a debtor-in-possession credit agreement (the “**Amended and Restated Initial Order**”). The Amended and Restated Initial Order was further amended on May 12, 2009, to correct certain references and typographical errors, and on June 12, 2009, to increase the Canadian sub-facility borrowing limit under the DIP Credit Agreement (the “**Amended Amended and Restated Initial Order**”).
5. On April 22, 2009, Justice Morawetz granted an Order which, *inter alia*, approved a marketing process to identify a “Stalking Horse” bid for the sale of the Applicants’ business and approved the retention of Jefferies & Company, Inc. to assist with the marketing process.
6. On July 2, 2009, Justice Morawetz granted an Order which, *inter alia*, approved 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, on its own behalf and on behalf of one or more Canadian Purchasers to be named, (“**Sapa**”) (the “**Asset Purchase Agreement**”) as a “Qualified Bid”, approved the Bidding Procedures and approved the Break Fee.
7. No additional Qualified Bids were received prior to the Bidding Deadline in the Stalking Horse process. On July 20, 2009, Justice Campbell granted an Order (the “**Approval and Vesting Order**”) which, *inter alia*, approved 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 (the “**Sapa Transaction**”), and ordered a partial distribution of proceeds. The US Court approved the Sapa Transaction on the same date.
8. 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.
9. 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**”).

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 US Code (the “**Ch.7 Proceedings**”). On October 30, 2009, George L. Miller was appointed as the Chapter 7 Trustee of the Bankruptcy Estates of the US Debtors (the “**US Trustee**”).
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 Claims Procedure;
  - b) Completing the working capital calculation and any related purchase price adjustment pursuant to the Sapa Transaction. The working capital adjustment and the final purchase price were settled between the Applicants, the US Debtors, Sapa, Sun Indalex Finance, LLC (“**Sun**”) and the Monitor in July 2010. As a result, the Monitor received a total of US\$4,485,000 in additional proceeds;
  - c) Responding to the leave to appeal motion of the Retired Executives in connection with the SERP Motion and any resulting appeal. The Retired Executives’ motion for leave to appeal was dismissed by the Court of Appeal on March 24, 2010; and
  - d) Responding to any matters resulting from the decision of Justice Campbell in relation to the Deemed Trust Motions (defined below) and the Bankruptcy Leave Motion (defined below), including the filing of or responding to any appeal therefrom and the filing of any assignment in bankruptcy of any Applicant.
12. On October 13, 2010, the Monitor filed a notice of motion (the “**D&O Motion**”) seeking an Order declaring that none of the D&O Claims, as defined in the Claims Procedure Order, received by the Monitor, including the draft D&O Claim filed by the USW, 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. The motion was heard by Justice Campbell on November 10, 2010. The only parties to

oppose the motion were the Retired Executives and the USW. Counsel to the former directors and officers attended the motion and took no position. Justice Campbell reserved his decision pending release of the SCC Decision. In March 2013, Justice Campbell requested that the parties that attended the hearing of the D&O Motion provide the Court with an agreed statement of facts in order to assist the Court with its deliberations. As a result of the settlement agreement discussed below, the agreed statement of facts was never submitted to the Court.

## **PURPOSE OF REPORT**

13. To date, the Monitor has filed twenty-one reports on various matters relating to the CCAA Proceedings. This, the Monitor's Twenty-Second Report, is filed in support of the Monitor's motion for an extension of the Stay Period to December 31, 2013.
14. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
15. Except as described in this Report:
  - a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
16. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
17. The Monitor has prepared this Report in connection with the motion described in the Monitor's Notice of Motion dated October 25, 2013, returnable October 30, 2013. The Report should not be relied on for other purposes.

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

#### **LITIGATION FOR DETERMINATION OF PRIORITY CLAIMS**

19. Following the release of the SCC Decision, on March 15, 2013, having first notified the primary stakeholders of its intent to do so, the Monitor paid the US Trustee US\$10,751,247.22 pursuant to the Approval and Vesting Order. The Monitor is currently holding approximately \$918,061.02 and C\$4,005,741.32, which amounts are available for distribution to the creditors of the estate, subject to the payment of the legal and professional costs necessary to complete the Indalex estate (the “**Estate Funds**”).
20. On March 14, 2013, and March 22, 2013, respectively, counsel to the USW and counsel to the Retired Executives wrote to counsel to the Monitor requesting a distribution of the Estate Funds to both the Salaried Plan and the Executive Plan. On March 26, 2013, counsel to the Monitor responded to both counsel that a number of legal issues needed to be resolved before any distribution of the Estate Funds could occur.
21. A number of parties have asserted priority claims to the Estate Funds. These claims, as the Monitor understands them, are summarized below:
  - a) The US Trustee claims interest and costs accruing on the Subrogated DIP Claim, estimated to be in the amount of approximately US\$5.4 million (the “**US Trustee Claim**”). The US Trustee asserts priority for the US Trustee Claim under all security securing the DIP Loan, including the DIP Charge and the DIP Security Agreements;
  - b) The Salaried Plan claims the amount of the wind-up deficit of the Salaried Plan, estimated by the Salaried Plan Administrator to be approximately \$5,008,100 as at February 18, 2013 (the “**Salaried Plan Claim**”). Priority for the Salaried Plan Claim is asserted based on the deemed trust and lien and charge provisions of the Ontario *Pension Benefits Act*, R.S.O. c. P.8 (the “**PBA**”);

- c) The Executive Plan claims the amount of the wind-up deficit of the Executive Plan, estimated by the Executive Plan Administrator to be approximately \$3,305,500 as at February 18, 2013 (the “**Executive Plan Claim**”). Priority for the Executive Plan Claim is asserted based on the deemed trust and lien and charge provisions of the PBA; and
- d) Sun claims the amount of approximately \$38,049,926.54 owing pursuant to the Amended and Restated Credit Agreement dated as of May 21, 2008, as amended, and the Canadian Security Agreement dated as of February 2, 2006, as amended (the “**Sun Claim**”). Sun claims priority for the Sun Claim based on the Canadian Security Agreement dated as of February 2, 2006, among Indalex Holding Corp., Indalex, the subsidiary parties identified therein and JPMorgan Chase Bank, N.A., as Administrative Agent, as amended.

#### **THE SETTLEMENT AGREEMENT**

- 22. On July 24, 2013, the Court was informed that Sun, the US Trustee, the Plan Administrator, the Superintendent, the Retired Executives and the USW had reached an agreement on the terms of a settlement, subject to: (a) Documentation; (b) the US Trustee obtaining US Court approval to enter into the Settlement Agreement; and (c) Approval by the Court.
- 23. Since that time, the Monitor and the primary stakeholders have finalized the terms of the Settlement Agreement and all parties thereto have executed the Settlement Agreement.
- 24. On October 10, 2013, the US Court granted an order approving the Settlement Agreement and authorizing the US Trustee to take such actions as are reasonably necessary to carry out the terms of the Settlement Agreement.
- 25. The parties are currently working to finalize some ancillary issues related to the proposed amendment to the Salaried Plan contemplated by the Settlement Agreement. It is anticipated that those issues will be resolved in the next few weeks and then the parties will be in a position to schedule and give notice of the Settlement Agreement approval motion.

## **EXTENSION OF STAY PERIOD**

26. The Stay Period currently expires on October 31, 2013. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including, *inter alia*:
- a) Seeking this Court's approval of the Settlement Agreement;
  - b) Obtaining a determination of the D&O Motion; and
  - c) Distribution of the Estate Funds.
27. As at the date of this report, the Monitor holds cash on hand in excess of \$5 million. Accordingly, there is sufficient funding for the extension of the Stay Period.
28. The Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to December 31, 2013.
29. The Monitor also believes that the Applicants have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
30. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay Period until December 31, 2013.

The Monitor respectfully submits to the Court this, its Twenty-Second Report.

Dated this 25<sup>th</sup> day of October, 2013.

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



Nigel D. Meakin  
Senior Managing Director