

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

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

**SIXTH REPORT OF THE MONITOR
June 29, 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.

**SIXTH 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. On April 8, 2009, the Honourable Mr. Justice Morawetz granted the Amended & Restated Initial Order which, *inter alia*, approved the DIP Credit Agreement (as defined in paragraph 33 of the Amended & Restated Initial Order). The Amended & Restated Order was further amended on May 12, 2009, to correct certain references and typographical errors in the Amended & Restated Initial Order, and on June 12, 2009, to increase the Canadian sub-facility borrowing limit.
3. On April 22, 2009, the Honourable Mr. Justice Morawetz granted an Order which, *inter alia*, extended the Stay Period to June 26, 2009, and approved the Marketing Process. On June 19, 2009, the Honourable Mr. Justice Morawetz granted an Order which, *inter alia*, extended the Stay Period to July 24, 2009.
4. 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. Collectively, Indalex Finance and its affiliates (the "**Indalex Group**") is the second largest aluminium extruder in North America.
5. 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.
6. The purpose of this report is to inform the Court on the following:
 - (a) The conduct of the Marketing Process;
 - (b) The Applicants' request for an Order:
 - (i) approving of the proposed bidding procedures (the "**Bidding Procedures**") to be used in conjunction with the

proposed conduct of a stalking horse bidding process (the “**Stalking Horse Process**”) for the sale of the assets of the US Debtors and the Applicants, except Novar (collectively, the “**Debtors**”);

- (ii) deeming the Asset Purchase Agreement dated as of June 16, 2009 by and among Sapa Holding AB, on its own behalf as US Purchaser and on behalf of one or more Canadian Purchasers to be named and the Debtors (the “**APA**”) to be a Qualified Bid (as defined in the Bidding Procedures) and accepted for the purposes of conducting the Stalking Horse Process; and
- (iii) approving and authorizing the payment of the Break Fee (as such term is defined in the APA) in the manner provided for in the APA, in conjunction with the Stalking Horse.

7. 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.

8. 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 & Restated Initial Order or prior Monitor's Reports.

CONDUCT OF THE MARKETING PROCESS

SELECTION OF THE STALKING HORSE BIDDER

9. On April 22, 2009, the Court approved the Marketing Process described in the Second Report of the Monitor dated April 20, 2008. The Monitor provided updates on the progress of the Marketing Process in its Third, Fourth and Fifth Reports dated May 11, 2009, June 11, 2009, and June 16, 2009, respectively. Copies of the Monitor's Reports can be obtained from the Monitor's website at <http://cfcanda.fticonsulting.com/indalex>.
10. The Debtors, with the assistance of Jefferies, commenced its marketing efforts on or about March 18, 2009. Jefferies, in consultation with the Debtors, prepared a list of logical potential interested parties, including both strategic and financial investors. The list was supplemented by a number of parties who contacted the Debtors or Jefferies during the process. In all, 54 potential buyers were contacted.
11. 36 interested parties executed confidentiality agreements and were provided with a copy of the confidential information memorandum prepared by Jefferies and the Debtors.
12. 13 non-binding letters of intent ("LOIs") were received on or about April 29, 2009 with indications of value ranging from \$65 million to \$120 million. Following a detailed review of the LOIs by the US Debtors and the Applicants in consultation with their advisors and the Monitor, seven parties were invited to undertake detailed due diligence.

13. Following detailed due diligence, which included management presentations, site visits and access to extensive diligence information via an electronic data room, four parties submitted binding offers by June 4, 2009, the deadline established by the Debtors, in consultation with their advisors and the Monitor. All of the offers were for substantially all of the assets of the US Debtors and the Applicants.
14. Over a period of several days following the receipt of the offers, Jefferies held discussions with each of the offering parties to clarify various aspects of the offers. In addition, each of the parties was given the opportunity to increase the value of its offer, reduce conditionality or otherwise improve the terms of its offer. At the conclusion of this stage of the Marketing Process, bids were received from four bidders. The details and quantum of the bids received will be provided to the Court, separate from this report, in support of the Applicants' motion to approve the Stalking Horse Bid and the Bidding Procedures. The Applicants have requested that this information be kept confidential until the closing of the sale to the Successful Bidder.
15. Management of both the US Debtors and the Applicants, in consultation with their legal and professional advisors and the Monitor, assessed the offers received and recommended selection of the offer from Bidder 1 to the Board of Directors of the US Debtors (the "**US Board**") and to the Board of Directors of the Applicants (the "**Canadian Board**"). On June 10, 2009, the Canadian Board approved management's recommendation. On June 11, 2009, the US Board approved management's recommendation and authorized management to commence negotiation of a definitive agreement of purchase and sale which would, subject to the approval of the Court and the US Court, constitute a "Stalking Horse bid" (the "**Stalking Horse Bid**") in a process which will solicit "qualifying topping bids" in contemplation of an auction involving the Stalking Horse and those parties that submit qualifying topping bids.

16. On June 16, 2009, the deadline for execution of a Stalking Horse agreement established by the DIP Credit Agreement, a definitive asset purchase agreement (the “APA”) was executed by and among Sapa Holding AB, on its own behalf as US Purchaser and on behalf of one or more Canadian Purchasers to be named (collectively, the “**Stalking Horse Bidder**”), and the Debtors.

THE STALKING HORSE BID

17. The key aspects of the Stalking Horse Bid, a copy of which is attached as Schedule “B” to the Applicants Notice of Motion served June 17, 2009 returnable July 2, 2009, (the “**July 2 Notice of Motion**”), are summarised in paragraphs 26 to 52 of the affidavit of Fred Fazio sworn June 29, 2009, and filed in support of the Applicant’s motion returnable July 2, 2009 (the “**Fazio Affidavit**”).
18. Other than the approval and authorization of the payment of the Break Fee in the manner provided for in the APA, the Applicants are not seeking approval of the APA at this time.

SUBSEQUENT OFFER FOR CANADIAN ASSETS

19. Throughout the CCAA Proceedings and the Ch.11 Proceedings, the Debtors and their respective advisors have consistently expressed the view that the operations of the Applicants and the US Debtors are intertwined to such an extent that there was no real prospect of separating the businesses.

20. Given the integrated nature of Debtors, it was the opinion of the Debtors and Jefferies that the process for marketing the Canadian assets must be integrated with the process for marketing the US assets. The Monitor agreed with an integrated process, provided that the process did not foreclose the possibility that interested parties could submit offers for individual assets or groups of assets. The Monitor is informed by counsel to the Applicants that on or about April 22, 2009, a letter was sent to all “interested parties” in the Marketing Process advising them of the commencement of the CCAA Proceedings and the anticipated approval of the Marketing Process and confirming that bids could be made for all or any part of the Debtors’ assets.
21. All 13 of the LOIs received by the Debtors on or about April 29, 2009, and all four of the binding offers received by the Debtors by the June 4, 2009 deadline contemplated a transaction involving the purchase of all of the Debtors’ assets.
22. On June 15, 2009, Jefferies received an offer for the Canadian assets on a standalone basis. The bidder was one of the original parties contacted by Jefferies, and had previously submitted an LOI contemplating the purchase of all of the assets of the Debtors and based on the LOI’s received the bidder was invited to continue in the Marketing Process. The offer had a cash purchase price of Cdn\$39.65 million. In addition, the bidder agreed to assume approximately \$4.8 million of liabilities, subject to certain conditions. The offer has no financing condition but is subject to completion of certain due diligence.
23. While the offer does not contemplate the purchase of the US Assets by the offeror, the offer cover letter indicates that the bidder has been involved in discussions with well known, national liquidation firms and would be willing to explore a partnership with one such firm under which the US Assets would be liquidated and the Canadian Assets acquired as a going concern for merger into the bidder’s existing Canadian aluminium extrusion platform.

24. Counsel to the Monitor provided the bidder's Canadian counsel with a copy of the Applicants' motion record seeking approval of the Bidding Procedures on June 16, 2009.

APPLICANTS' REQUEST FOR APPROVAL OF BIDDING PROCEDURES

25. The Bidding Procedures are attached as Schedule "A" to the July 2 Notice of Motion. Capitalized terms used in this section of this report not otherwise defined are as defined in the Bidding Procedures.
26. It is a condition of the APA that the Stalking Horse Bidder be satisfied with the form of the order approving the Bidding Procedures, and therefore Stalking Horse Bidder must be satisfied with the Bidding Procedures.
27. The key aspects of the Bidding Procedures are summarized as follows:
- (a) A "**Qualified Bidder**" is a Potential Bidder (or combination of Potential Bidders whose Bids for the assets of the Debtors do not overlap and who agree to have their Bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) that delivers certain documents, including a confidentiality agreement and proof of financial ability to perform, and that the Debtors in their discretion and with assistance from their advisors and the Canadian Monitor determines is reasonably likely to submit a bona fide offer that would result in greater cash value being received for the benefit of the Debtors' creditors than under the APA and to be able to consummate a sale if selected as a Successful Bidder;
 - (b) Qualified Bidders will be provided the opportunity to perform additional due diligence;

- (c) All Bids must be submitted in writing so that they are actually received no later than 10:00 a.m. (Eastern time) on July 14, 2009 (the “**Bidding Deadline**”)
- (d) Qualified Bidders will be invited to participate in the Auction provided that by the Bid Deadline they submit a Bid meeting the following conditions:
 - (i) Written Submission of APA and Commitment to Close. Qualified Bidders must submit by the Bidding Deadline a black-line of the APA reflecting their proposed changes, and a written commitment that they intend to close on the terms and conditions set forth therein.
 - (ii) Bid Allotment. Each Bid shall clearly identify which portion of the aggregate purchase price is for the U.S. Assets and which portion of the purchase price is for the Canadian Assets so that the Debtors can accurately compare such Bid to other bids for the Assets. A Bid cannot allocate a lesser amount of the purchase price to the U.S. Assets than has been allocated thereto by the Stalking Horse Bidder. A Bid cannot allocate a lesser amount of the purchase price to the Canadian Assets than has been allocated thereto by the Stalking Horse Bidder. A Bid that does not comply with the foregoing shall not, under any circumstance, constitute a Qualified Bid.
 - (iii) Irrevocable. A Bid must be irrevocable until the sooner of (i) twenty-one (21) days after Orders from both the Canadian Court and U.S. Court are entered approving the sale of the Assets; and (ii) two (2) business days after the Assets have been sold pursuant to the Closing of the sale or

sales approved by the U.S. Court and Canadian Court in a final, non-appealable order (the “Termination Date”).

- (iv) Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Bid may not be more burdensome than those set forth in the APA.
- (v) Financing Sources. A Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtors with appropriate contact information for such financing sources.
- (vi) No Fees payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment. Further, by submitting a Bid, a Qualified Bidder shall be deemed to waive its right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code or in any way related to the submission of its Bid or the Bidding Procedures.
- (vii) Good-Faith Deposit. Each Bid must be accompanied by a deposit (the “Good Faith Deposit”) in the form of certified checks or cash payable to the order of the US Debtors and Applicants in the aggregate amount of not less than \$10,000,000, to be prorated as follows:
 - a) in respect of the U.S. Assets, a deposit in the amount of \$7,250,000 shall be paid to an escrow agent reasonably satisfactory to the US Debtors, to be held by such

escrow agent in accordance with these Bidding Procedures; and

b) in respect of the Canadian Assets, a deposit in the amount of \$2,750,000 shall be paid to the Monitor, to be held by the Monitor in accordance with these Bidding Procedures.

(viii) Minimum Overbid. With respect to consideration, a Bid must satisfy two minimum thresholds:

a) the aggregate consideration must be equal to or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the APA of **\$151,183,000¹**, plus the amount of the Break Fee of \$5,300,000 plus \$250,000 for a total minimum consideration of \$156,733,000 (the "Minimum Overbid"); and

b) the cash component of the Minimum Overbid for:

- (A) the U.S. Assets must be equal to or greater than the U.S. Cash Purchase Price of \$90,111,000 plus the US Debtors' *pro rata* share of the Break Fee payable under the APA being \$4,016,195 plus the U.S. Debtors' *pro rata* entitlement (based on the unadjusted Purchase Price allocation provided for in the APA) of the \$250,000 payable pursuant to subparagraph (i) above in the amount \$190,000, providing for a total minimum cash amount payable to the U.S. Debtors of **\$94,317,195**; and
- (B) the Canadian Assets must be equal to or greater than the Canadian Cash Purchase Price of \$31,700,000 plus the Canadian Debtors' *pro rata* share of the Break Fee payable under the APA being \$1,283,805 plus the Canadian Debtors' *pro*

¹which number is comprised of the U.S. Cash Purchase Price of \$90,111,000 plus the U.S. Base Assumed Liabilities Amount of \$24,436,000, and the Canadian Cash Purchase Price of \$31,700,000 plus the Canadian US Base Assumed Liabilities Amount of \$4,936,000

rata entitlement (based on unadjusted Purchase Price Allocation provided for in the APA) of the \$250,000 pursuant to subparagraph (i) above in the amount of \$60,000, being a total minimum cash amount payable to the Canadian Debtors of \$33,043,805.

- (e) The Auction will take place on July 16, 2009 with any Overbid after the Opening Bid having to be made in increments of at least \$250,000 (or such other amount the Debtors determine to facilitate the Auction). Additional consideration in excess of the amount set forth in the Baseline Bid must be comprised only of cash consideration. Each Overbid shall be deemed to be allocated between the U.S. Assets and the Canadian Assets in accordance with the allocation of the cash consideration of the Opening Bid.
 - (f) Hearings to approve the Successful Bidder's purchase agreement shall be heard by this Court and the US Court on July 20, 2009.
28. The Monitor is of the view that the Bidding Procedures contemplate a reasonable and transparent process designed to obtain the highest and best bid for the combined assets of the Applicants and the US Debtors.
29. The Monitor notes that the Bidding Procedures do not permit a party wishing to bid on only the Canadian Assets or only the US Assets to participate in the Auction. The Bidding Procedures do specifically contemplate that bidders may combine to form Qualified Bids and thereby participate in the Auction.

30. Section 5.14 of the DIP Credit Agreement requires that the Debtors effect a sale resulting in proceeds greater than a set amount (which amount remains confidential and has been redacted from all public documents in order to maintain the integrity of the sales process) of which a certain amount must be attributable to the US Assets (which amount also remains confidential) by July 21, 2009. Failure to obtain Court approval of such a transaction or series of transactions by July 21, 2009 would constitute a breach of the DIP Credit Agreement.
31. It is a condition precedent to the performance by the Stalking Horse Bidder of its obligations under the APA that the Bidding Procedures have been approved by the Court by July 2, 2009. Failure to obtain Court approval of the Bidding Procedures materially in the form previously approved by the Stalking Horse Bidder by July 2, 2009 would entitle the Stalking Horse Bidder to terminate the APA.
32. Further, without approval of a sale transaction that will satisfy the requirements of the DIP Credit Agreement, the Monitor is concerned that the Applicants will lose access to the financing necessary to continue ongoing operations, preserve the enterprise value of the Applicants and permit a sale of the Applicants' business as a going concern.
33. In light of all of the surrounding circumstances, the limitations imposed on the Applicants by the DIP Credit Agreement and the options available to the Applicants, the Monitor respectfully recommends approval of the Bidding Procedures.

APPLICANTS' REQUEST TO DEEM STALKING HORSE BID A QUALIFIED BID

34. The Applicants seek an Order deeming the Stalking Horse Bid to be a Qualified Bid pursuant to the Bidding Procedures.

35. The Monitor is of the view that the Marketing Process has been carried out as contemplated by the process approved by the Court on April 22, 2009. The Monitor has reviewed the draft Bidding Procedures and is of the view that the Stalking Horse Bid meets the criteria for being a Qualified Bid under the Bidding Procedures, subject to appropriate adjustments to reflect the identity of the bidder as the Stalking Horse Bidder.
36. Therefore, if the Bidding Procedures are approved by this Honourable Court, the Monitor respectfully recommends that the Applicants request for an Order deeming the Stalking Horse Bid to be a Qualified Bid pursuant to the Bidding Procedures be granted.

APPLICANTS' REQUEST FOR APPROVAL OF THE BREAK FEE

37. The Stalking Horse Bid provides for a Break Fee of \$5.3 million. The US Debtors and the Applicants are obligated to pay only their pro-rata share of the Break Fee based on their pro-rata share of the Purchase Price. As at the date of this report, the Break Fee payable by the Applicants is estimated to be \$1,283,805. The Break Fee equates to 3.5% of the estimated Purchase Price. There is no additional expense reimbursement over and above the Break Fee payable under the APA.
38. The Fazio Affidavit sets out a summary of break-fees paid in similar situations and states that the quantum of the Break Fee is consistent with the market practice for comparable transactions and is not inconsistent with the break fees requested in the Marketing Process. The Monitor concurs with this view.

39. The APA is a clean offer for the assets of the Debtors and is, in the view of the Monitor, an agreement that is capable of being completed if approved by the Court and the US Court. The Stalking Horse Bidder has expended considerable time and expense in performing its due diligence and negotiating the APA. The agreement to a Break Fee or other similar compensation is customary and necessary in order for a bidder to agree to act as a stalking horse.
40. The Break Fee is payable only in the event that an Alternate Transaction is completed. An Alternate Transaction is defined in the APA to mean a transaction or series of transactions, including, *inter alia*, any sale, reorganization, court-approved plan or refinancing of the DIP Credit Agreement, pursuant to which the Sellers dispose of all or substantially all of the Acquired Assets to a party or parties other than the Stalking Horse Bidder. An Alternate Transaction must provide that all amounts owing under the DIP Credit Agreement and the Break Fee be payable out of the proceeds of the sale.
41. Accordingly, the Monitor respectfully recommends that the Applicants' request for approval of the Break Fee be granted if the Bidding Procedures are approved and the Stalking-Horse Bid is deemed to be a Qualified Bid.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

42. For the reasons set forth above, the Monitor respectfully recommends approval of the Bidding Procedures.
43. For the reasons set forth above, if the Bidding Procedures are approved by this Honourable Court, the Monitor respectfully recommends that the Applicants' request for an order deeming the Stalking Horse Bid to be a Qualified Bid pursuant to the Bidding Procedures be granted.

44. For the reasons set forth above, if the Bidding Procedures are approved and the Stalking Horse Bid is deemed to be a Qualified Bid, the Monitor respectfully recommends that the Applicants' request for approval of the Break Fee be granted.

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

Dated this 29th day of June, 2009.

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



for

Nigel D. Meakin
Senior Managing Director