

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

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

**SEVENTEENTH REPORT OF THE MONITOR
January 11, 2012**

**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.

**SIXTEENTH 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 January 31, 2012.
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 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 Debtor, 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.

PURPOSE OF REPORT

12. The purpose of this, the Monitor’s Seventeenth Report, is to inform the Court on the following:
- (a) The status of the Claims Procedure;
 - (b) The status of the appeal of the Deemed Trust Motions; and
 - (c) The request for an extension of the Stay Period until 30 days following the release of the decision of the Supreme Court of Canada (discussed below at paragraphs 24-26).

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://cfcanada.fticonsulting.com/indalex/>.

STATUS OF CLAIMS PROCEDURE

15. The Claims Procedure was conducted in accordance with the Claims Procedure Order.
16. A determination as to the validity of unsecured Claims has been held in abeyance pending a determination as to whether there will be funds available to distribute to unsecured creditors. Based on current information, it appears that there will not be any funds available to unsecured creditors.
17. In addition to the unsecured claims, the Monitor received 17 D&O Proofs of Claim by the Claims Bar Date and one draft D&O Proof of Claim from the United Steelworkers in October 2010. The Monitor reviewed the 18 D&O Proofs of Claim and, based on its review, formed the opinion that the D&O Claims did not trigger the indemnity in favour of the directors and officers that is secured by the Directors' Charge.

18. Accordingly, the Monitor brought a motion seeking: (a) an order declaring that none of the D&O Claims are claims for which the Applicants are required to indemnify their directors and officers; and (b) an order terminating, discharging and releasing the Directors' Charge from the Property (the "**D&O Motion**"). The D&O Motion was heard by Justice Campbell on November 20, 2010 and the decision remains under reserve.

DEEMED TRUST MOTIONS AND BANKRUPTCY LEAVE MOTION

19. On August 28, 2009, 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**").
20. 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**").
21. 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.
22. Leave to appeal the Deemed Trust Decision was granted by the Court of Appeal for Ontario on May 20, 2010 and the appeal was heard on November 23 and 24, 2010 (the "**Pension Appeal**").

23. On April 7, 2011 the Court of Appeal for Ontario allowed the Pension Appeal and ordered the Monitor to pay from the Reserve fund into each of the Salaried Pension Plan and the Executive Pension Plan an amount sufficient to satisfy the deficiencies in each plan (the “**CA Pension Decision**”). On April 28, 2011, the Honourable Justice Juriensz granted Sun’s motion, on consent of all parties, for, amongst other things, an interim order pursuant to section 65.1 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as amended, staying the CA Pension Decision until the conclusion of a motion for a stay on the merits.
24. The US Chapter 7 Trustee, Sun and the Monitor, on behalf of Indalex Limited, filed applications for leave to appeal the CA Pension Decision to the Supreme Court of Canada (the “**SCC Leave Applications**”).
25. The SCC Leave Applications were granted by the Supreme Court of Canada on December 1, 2011. Notices of Appeal have been filed by the US Chapter 7 Trustee, Sun and the Monitor and, accordingly, there is an automatic stay against execution of the CA Pension Decision.
26. The parties to the Supreme Court of Canada Appeals have agreed to an expedited schedule and the Monitor understands that the Retirees will be bringing a motion seeking approval of the schedule and a hearing of the Appeals prior to the conclusion of the Spring Term on May 31, 2012.

EXTENSION OF THE STAY PERIOD

27. The Stay Period currently expires on January 31, 2011. Additional time is required to complete the matters necessary for the completion of the CCAA Proceedings, including, *inter alia*, the determination of the Supreme Court of Canada Appeals and the distribution of proceeds from the Sapa Transactions.

28. The distribution of proceeds cannot occur until the Supreme Court of Canada Appeals are resolved. It is expected that the decision of the Supreme Court of Canada will not be released until the latter part of 2012 at the earliest. The Monitor believes that an extension of the stay of proceedings is necessary to provide stability during that time.
29. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay Period until 30 days following the release of the decision of the Supreme Court of Canada.

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

Dated this 11th day of January, 2012.

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