

**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.

Applicants

**MOTION RECORD**  
(Returnable January 27, 2011)

January 20, 2011

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**TAB 1**

**ONTARIO  
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NOVAR INC.

the Applicants

**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 January 27, 2011 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 and the Motion Record, if necessary, and a direction that any further service of the Notice of Motion and Motion Record be dispensed with;

2. An order extending the Stay Period provided under the Amended Amended and Restated Initial Order of the Honourable Mr. Justice Morawetz dated May 12, 2009 until April 30, 2011; and
3. An order approving the Fourteenth Report and the activities of the Monitor described therein.

**THE GROUNDS OF THE MOTION ARE:**

1. The grounds set forth in the Fourteenth Report of the Monitor;
2. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
3. Section 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36; and
4. 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 Fourteenth Report of the Monitor dated January 20, 2011; and
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

January 20, 2011

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**IN 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.**

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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TAB 2

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

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

**FOURTEENTH REPORT OF THE MONITOR  
January 20, 2011**

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

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6326765 CANADA INC. and  
NOVAR INC.

**FOURTEENTH 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, 2011.
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 (as defined below) 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 and the Bankruptcy Leave Motion, 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 Fourteenth 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 April 30, 2011.

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. 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.
16. 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.

- 17. As reported in the Twelfth Report of the Monitor dated April 28, 2010, the Monitor reviewed the secured claim of Sun Indalex Finance, LLC (“Sun”) and concluded that the Sun Claim represents a valid secured claim against the Applicants the quantum of which is yet to be determined. 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.
- 18. 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.
- 19. 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 is currently under reserve.

**DEEMED TRUST MOTIONS AND BANKRUPTCY LEAVE MOTION**

- 20. 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”).
- 21. 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”).

22. 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.
23. 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”). The decision of the Court of Appeal is currently under reserve.

#### **EXTENSION OF THE STAY PERIOD**

24. 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 dealing with the outcome of the D&O Motion, the Pension Appeal, and the distribution of proceeds from the Sapa Transactions.
25. The distribution of proceeds cannot occur until the D&O Motion and the Pension Appeal are resolved. The Monitor believes that an extension of the stay of proceedings is necessary to provide stability during that time.
26. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay period until April 30, 2011.

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

Dated this 20<sup>th</sup> day of January, 2011.

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 3

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

THE HONOURABLE ) THURSDAY, THE 27<sup>TH</sup> DAY  
 )  
JUSTICE ) OF JANUARY, 2011

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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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 Fourteenth 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 Fourteenth Report of the Monitor dated January 20, 2011 (the "**Fourteenth 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 Fourteenth 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 April 30, 2011.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

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Proceeding commenced at Toronto

**MOTION RECORD  
(RETURNABLE JANUARY 27, 2011)**

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