

November 22, 2013

Dear Member/Former Member:

Re: Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the “Plan”), Registration No 0455626

NOTICE OF COURT HEARING

We are writing to provide you with an update on matters relating to the wind up of the Plan since our last communication dated May 31, 2013 (our “**prior letter**”) and to give you notice of an important upcoming Court hearing.

Attached is a copy of the Notice of Motion of the Court-appointed Monitor, FTI Consulting Canada ULC, (the “**Monitor**”) that is scheduled to be heard by the Ontario Superior Court of Justice on December 19, 2013. The Motion seeks approval of the Settlement Agreement (defined below), distribution of the proceeds remaining from the sale of the assets of Indalex Limited and certain related entities (the “**Proceeds**”) and termination of the Indalex CCAA proceedings. A copy of the Twenty-Third Report of the Monitor (the “**Monitor’s Report**”) filed in connection with the motion and a copy of the Settlement Agreement are attached hereto for your information. Unless defined in this letter, terms used herein are as defined in the Monitor’s Report. An electronic copy of the entire motion record can be downloaded from the Monitor’s website: <http://cfcanada.fticonsulting.com/indalex/motions.htm>. If you would like a hard copy of the motion record, please contact the Monitor by email at: indalex@fticonsulting.com, or by phone at 416-649-8084.

In our prior letter we informed you that on February 1, 2013, the Supreme Court of Canada (the “**Supreme Court**”) had rendered its decision in relation to the priority of the deemed trust and the existence of a constructive trust and that the decision of the Supreme Court was not in favour of the claims advanced on behalf of the Plan.

As described in more detail in the Monitor’s Report, a number of parties have asserted priority claims against the Proceeds (of approximately \$5 million), including:

1. The US Trustee claims approximately US\$5.4 million in interest and costs in respect of the DIP Charge;
2. The Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies (the “**Salaried Plan**”) claims approximately \$5 million in respect of the amount of the wind up deficit of the Salaried Plan;

3. The Plan claims approximately \$3.3 million in respect of the amount of the wind up deficit of the Plan; and
4. Sun Indalex Finance, LLC (“**Sun**”) claims approximately \$38 million pursuant to security granted to Sun by Indalex to support the debt owing by the US Indalex entities to Sun.

Subsequent to our prior letter, Morneau Shepell Ltd., in its capacity as Administrator of the Plan, (the “**Administrator**”), the Superintendent of Financial Services (the “**Superintendent**”) and a number of parties asserting priority claims against the Proceeds, have, with the assistance of the independent Court-appointed Monitor, engaged in negotiations toward a settlement of the various claims against the Proceeds. Significant efforts were made by all parties and we are pleased to inform you that an agreement has been reached regarding distribution of the Proceeds (the “**Settlement Agreement**”).

The Settlement Agreement fully outlines the terms of the agreement. In brief, pursuant to the Settlement Agreement, the Proceeds (of approximately \$5 million) will be distributed as follows:

1. An aggregate of \$350,000 will be paid to Koskie Minsky LLP on behalf of the Plan members represented by Koskie Minsky LLP;
2. \$285,000 will be paid to Koskie Minsky LLP as partial reimbursement of the legal costs incurred by those Plan members represented by Koskie Minsky LLP;
3. An aggregate of \$15,000 will be paid in equal parts to the four Plan members who were not represented by Koskie Minsky LLP;
4. \$650,000 will be paid into the Salaried Plan and shared pro rata among all members of the Salaried Plan (other than those represented by the United Steelworkers (the “**USW**”)) regardless of the province in which the Salaried Plan member resides;
5. \$105,000 will be paid to the USW on behalf of those members of the Salaried Plan represented by the USW; and
6. The balance of the Proceeds will be paid to the US Trustee on behalf of the bankruptcy estates of the US Indalex entities, without prejudice to the claims and liens, if any, of Sun and its affiliates and the claims and responses, if any, of the US Trustee and other parties in those proceedings.

Any funds paid to Plan members will be paid directly to or on behalf of those members as outlined above. No funds will be paid into the Plan itself.

Morneau Shepell has signed the Settlement Agreement in its capacity as the Administrator of the Plan, but not on behalf of each individual member and former member of the Plan. We were intimately involved in the negotiations and believe that in all of the circumstances the Settlement Agreement represents a fair and reasonable settlement. The Superintendent has also signed the

Settlement Agreement and is supporting its approval. Counsel for all other parties, including the represented Executive Plan Members and the USW have also signed the Settlement Agreement on behalf of their clients and support its approval.

The motion is scheduled for 10:00am on December 19, 2013, at 330 University Avenue, Toronto, Ontario. You are entitled to attend the Court hearing; however, if you agree with the terms of the settlement, you do not have to take any further steps and there is no requirement that you attend. If you have any questions or concerns respecting the Settlement Agreement we would encourage you to contact the Monitor at the coordinates set forth on page one of this letter and/or the Administrator at:

Phone: (416) 445-2700 (or toll-free telephone number 1-888-667-6328) and ask for either Pauline Frenette (ext. 3530) or Joanne Cheng (ext. 3384)
Email: pfrenette@morneaushepell.com or jcheng@morneaushepell.com

If the Settlement Agreement is approved, the Administrator will be in a position to proceed with the required steps to complete the wind-up process as detailed in our prior letter. We recognize the urgency of many Plan members' circumstances and we are striving to complete the wind-up as quickly as possible.

Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator of the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies and not in its personal capacity.



per: Pauline Frenette
Senior Consultant

**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.

(the "**Applicants**")

NOTICE OF MOTION

(Re: Approval of Settlement Agreement; Distribution of Estate Proceeds; Approval of the Fees and Expenses of the Monitor and the Monitor's Counsel; Discharge of the Monitor; and Termination of the CCAA Proceedings)

FTI Consulting Canada ULC ("**FTI Consulting**"), the Court-appointed Monitor (the "**Monitor**") of Indalex Limited ("**Indalex**"), Indalex Holdings (B.C.) Ltd. ("**Indalex BC**"), 6326765 Canada Inc. ("**632**") and Novar Inc. ("**Novar**" and, together with Indalex, Indalex BC and 632, the "**Applicants**"), will make a motion to the Court on Thursday, December 19, 2013, 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 substantially in the form included at Tab 4 of the Motion Record, among other things:
 - (a) Approving the Settlement Agreement (as that term is defined below);
 - (b) Directing the Monitor to make certain distributions; and

- (c) Assigning the Basic Structure Litigation to the US Trustee (as those capitalized terms are defined below);
2. An Order substantially in the form included at Tab 5 of the Motion Record declaring that none of the D&O Claims (as that term is defined in the Claims Procedure Order of the Honourable Justice Morawetz dated July 30, 2009 (the “**Claims Procedure Order**”)) received by the Monitor 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 of the Honourable Justice Morawetz dated May 12, 2009 (the “**Initial Order**”), and terminating, discharging and releasing the Directors’ Charge (as that term is defined in the Initial Order);
3. An Order substantially in the form included at Tab 6 of the Motion Record:
 - (a) Approving the Twenty-First Report of the Monitor dated June 21, 2013 (the “**Twenty-First Report**”) and the Twenty-Third Report of the Monitor (the “**Twenty-Third Report**”) filed in connection with the Applicants’ proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “**CCAA**”) and the activities of the Monitor described in each of them;
 - (b) Approving the fees and disbursements of the Monitor and the Monitor’s counsel, Stikeman Elliott LLP (the “**Monitor’s Counsel**”);
 - (c) Discharging FTI Consulting as the Court-appointed Monitor of the Applicants upon the filing with the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) of a certificate by the Monitor certifying, among other things, that (i) all distributions under the Settlement Agreement have been made; (ii) the fees and disbursements of the Monitor and of the Monitor’s Counsel have been paid in full; and (iii) any and all matters that may be incidental to the termination of the CCAA Proceedings have been completed (the “**Monitor’s Completion Certificate**”);

- (d) Extending the Stay Period (as defined below) until the filing with the Court of the Monitor's Completion Certificate by the Monitor; and
 - (e) Terminating the CCAA Proceedings upon filing with the Court of the Monitor's Completion Certificate by the Monitor.
4. Such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS OF THE MOTION ARE:

1. On April 3, 2009, the Applicants made an application under the CCAA and an Initial Order was made by the Honourable Mr. Justice Morawetz granting, *inter alia*, a stay of proceedings against the Applicants until May 1, 2009 (the "**Stay Period**") and appointing FTI Consulting as Monitor. The Stay Period has been extended a number of times and currently expires on December 31, 2013.
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. On July 31, 2009, Sapa Holding AB, on its own behalf and on behalf of one or more Canadian Purchasers to be named, acquired substantially all of the assets and business of the Applicants and the US Debtors.
4. 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 Claims Procedure Order.

5. 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. 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**”).

6. 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.

Settlement Agreement

7. The Monitor is currently holding approximately US\$918,055.02 and C\$3,964,152.32, 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**”).

8. A number of parties have asserted priority claims to the Estate Funds, as summarized in the Twenty-Third Report. Resolution of these competing claims would be expensive and time-consuming and would erode recoveries to stakeholders.

9. On September 13, Sun Indalex Finance, LLC (“**Sun**”); Morneau Shepell Ltd., as administrator of the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the “**Executive Plan**”) and the Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies; the United Steelworkers (the “**USW**”); the US Trustee; the group of fourteen (14) members of the Executive Plan represented by Koskie Minsky LLP (the “**Retired Executives**”); and the Ontario Superintendent of Financial Services executed an agreement (the “**Settlement Agreement**”) pursuant to which the Estate Funds will be distributed. The key terms of the Settlement Agreement are summarized in the Twenty-Third Report.

10. On October 10, 2013, the US Court granted an order approving the US Trustee’s acceptance of 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.

11. The Monitor respectfully recommends that the Settlement Agreement be approved.

D&O Claims and the Directors' Charge

12. On November 10, 2010, the Honourable Mr. Justice Campbell heard a motion (the "**D&O Motion**") brought by the Monitor seeking (a) an order declaring that none of the D&O Claims, including the D&O Claim filed by the Retired Executives and the draft D&O Claim delivered to the Monitor by the USW, 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. Justice Campbell's decision on the D&O Motion remains under reserve.

13. Pursuant to the terms of the Settlement Agreement, the Retired Executives and the USW will both withdraw their claims without any right to re-file their claims or file any other claim pursuant to the Claims Procedure Order, and will consent to the issuance of the orders sought in the D&O Motion.

Authorization to Make Distributions

14. Paragraph 11(a) of the Initial Order prohibits the Applicants from making any payment of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the CCAA filing date until future order of the Court.

15. If this Honourable Court grants an order approving the Settlement Agreement and the relief sought on the D&O Motion is granted, there will be no further impediment to the distribution of the funds held by the Monitor. Accordingly, the Monitor seeks an Order authorizing the Monitor to make the distributions mandated by the Settlement Agreement.

Status of the CCAA Proceedings

16. Indalex is a party to one outstanding piece of litigation: a proceeding between Indalex Limited, as Plaintiff, and 992427 Ontario Inc. (c.o.b. as Basic Structure Engineering), Basic Structure Engineering Inc. and Edward Ulrich (collectively, the "**BSE Defendants**"), as Defendants, bearing Ontario Superior Court of Justice Court File No. CV-09-1215-00 (the

“**Basic Structure Litigation**”). In the Basic Structure Litigation, Indalex has obtained default judgment (the “**Default Judgment**”) against the BSE Defendants in the amount of \$1,116,426.58.

17. The Monitor is of the view that it is appropriate to treat the claim against the BSE Defendants and any proceeds recovered in the Basic Structure Litigation in a manner consistent with the treatment of the estate funds under the Settlement Agreement and, with the consent of Sun and the US Trustee, assign the cause of action and the Default Judgment to the US Trustee on behalf of the bankruptcy estates of the US Debtors without prejudice to the claims and liens, if any, of Sun and its affiliates and the claims and responses, if any, of the US Trustee and other parties in those proceedings (the “**Proposed Assignment**”).

18. If the Settlement Agreement is approved, the making of the distributions provided for in the Settlement Agreement and the Proposed Assignment will be the only matters to be completed to finalize the CCAA Proceedings. Accordingly, an Order terminating the CCAA Proceedings and discharging the Monitor is appropriate.

Other Grounds

19. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

20. 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:

21. The Twenty-First Report of the Monitor dated June 21, 2013;

22. The Twenty-Third Report of the Monitor dated November 22, 2013, including:

(a) The Settlement Agreement;

(b) The Affidavit of Nigel Meakin sworn November 22, 2013; and

(c) The Affidavit of Ashley Taylor sworn November 21, 2013;

23. The Motion Record and Factum of the Monitor dated October 14, 2010, filed in these CCAA Proceedings, in connection with a motion for, among other things, 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 terminating, discharging and releasing the Directors' Charge; and

24. Such further and other materials as counsel may advise and this Honourable Court may permit.

November 22, 2013

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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
(RE: APPROVAL OF SETTLEMENT AGREEMENT,
APPROVAL OF FEES & EXPENSES OF MONITOR AND ITS
COUNSEL, TERMINATION OF CCAA PROCEEDINGS, ETC.)**

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

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

TWENTY-THIRD REPORT OF THE MONITOR

November 22, 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-THIRD 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 December 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.
13. 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. As at the date of this report, the Monitor is holding US\$918,055.02 and C\$4,064,152.32 (including retainers held by the Monitor and its counsel), 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**”).
14. 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.

PURPOSE OF REPORT

15. To date, the Monitor has filed twenty-two reports on various matters relating to the CCAA Proceedings. The purpose of this, the Monitor's twenty-third report to the Court (the "**Twenty-Third Report**") is to seek orders of the Court, *inter alia*:
- (a) Approving the settlement agreement, a copy of which is attached hereto as **Appendix A**, between Sun, the Pension Administrators, the Ontario Superintendent of Financial Services (the "**Superintendent**"), the US Trustee, the USW and the Retired Executives dated September 13, 2013 (the "**Settlement Agreement**") and the implementation of the Settlement Agreement;
 - (b) Declaring that none of the D&O Claims received by the Monitor 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 as requested in the D&O Motion and terminating, discharging and releasing the Directors' Charge from the Property;
 - (c) Authorizing and directing the Monitor to make the distributions contemplated by the Settlement Agreement;
 - (d) Approving the assignment of the BSE Litigation, as defined later in this report;
 - (e) Approving the Twenty-First Report of the Monitor dated June 21, 2013, and this Twenty-Third Report and the activities of the Monitor described therein and herein;

- (f) Approving the fees and disbursements of the Monitor and its legal counsel for the period from April 3, 2009 to November 17, 2013, and the fees and disbursements of the Monitor and its legal counsel for the period from November 18, 2013 until the Monitor's discharge;
 - (g) Discharging the Monitor and terminating the CCAA Proceedings, each effective upon the filing by the Monitor of a certificate confirming completion of the Monitor's remaining obligations (the "**Monitor's Completion Certificate**"); and
 - (h) Extending the Stay Period until the filing of the Monitor's Completion Certificate with the Court.
16. 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**").
17. 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.

18. 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.
19. The Monitor has prepared this Report in connection with the motion described in the Monitor's Notice of Motion dated November 22, 2013, returnable December 19, 2013 (the "**Settlement Approval Motion**"). The Report should not be relied on for other purposes.
20. 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 Amended Amended and Restated Initial Order or other Orders issued in the CCAA Proceedings.

REQUEST FOR APPROVAL OF THE SETTLEMENT AGREEMENT

LITIGATION FOR DETERMINATION OF PRIORITY CLAIMS

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.
22. In addition to the parties asserting priority claims against the Estate Funds, 347 creditors filed claims against the Applicants pursuant to the Claims Procedure Order for an aggregate amount of approximately \$33.8 million. In addition, it is possible that there were inter-company claims owing to the US Debtors which were not filed under the Claims Procedure Order.

23. The Claims Bar Date was August 28, 2009. The US Trustee was not appointed until October 2009. The US Trustee has not filed a Proof of Claim. However, in March 2011, the US Trustee informed the Monitor that there were several payments in the aggregate amount of \$12,355,201.30 made by the US Debtors to one or more of the Applicants that could potentially constitute preferential payments under the US Code. The US Trustee further informed the Monitor that it wished to preserve these claims against the Applicants and in order to do so was required to file a Complaint in the US Court by no later than April 18, 2011. The US Trustee requested and obtained the Monitor's consent to a lifting of the CCAA stay of proceedings to permit the filing of the Complaint in the US Court on the basis that:

- (a) The US Trustee would take no further steps beyond the filing of the Complaint in the US Court and service of the Complaint, if necessary, without the consent of the Monitor or leave of the Court; and
- (b) The Monitor reserved all of its rights with respect to the Complaint, including the right to object to the late filing of a Proof of Claim in the Claims Procedure based on the preference claim, provided that the Monitor would not argue that any further delay (after March 4, 2011) in applying to the Court for leave to file the claim is a basis to refuse leave to file the claim late.

24. If some or all of the priority claims asserted by the stakeholders described above are found to be valid, then there will be insufficient Estate Funds to provide for any distribution to the unsecured creditors. Accordingly and as previously reported, the Monitor has not reviewed the unsecured claims filed in accordance with the Claims Procedure Order. However, the Monitor notes that there is a potential scenario where there could be funds available for distribution to the unsecured creditors. In order for there to be Estate Funds available for distribution to unsecured creditors, the following series of events would have to unfold:
- (a) The US Trustee's claim for interest and costs would have to fail;
 - (b) The Salaried Plan deemed trust would have to be defeated, either through a bankruptcy of Indalex or otherwise;
 - (c) The deemed trust claimed by the Executive Plan would have to be defeated, either on the basis of res judicata, through a bankruptcy of Indalex or otherwise;
 - (d) The lien and charge claimed by the Pension Administrators would have to be defeated, either through a bankruptcy of Indalex or otherwise; and
 - (e) The secured claim claimed by Sun would have to be defeated, either through a challenge as a preference in a bankruptcy of Indalex or otherwise.
25. The Monitor has not attempted to quantify the likelihood of each of those events happening, however, it is the Monitor's opinion that the likelihood all of those events happening is extremely low. The Monitor noted the possibility in order that the Court was aware of its existence and so that it could be addressed appropriately if circumstances warranted.

26. On May 31, 2013, the Monitor brought a motion seeking the Court's advice and direction with respect to a litigation process and schedule to determine certain threshold legal issues related to the distribution of the Estate Funds. In connection with the Monitor's motion, the USW, the Retired Executives, the Pension Administrators, FSCO, the US Trustee, Sun and the Monitor agreed to the terms of two draft orders each of which outlined a different schedule for the determination of the threshold legal issues described below. The first order, preferred by the Retired Executives and the USW, contemplated a single motion to determine the legal issues. The second order, preferred by the Pension Administrators, FSCO, the US Trustee and Sun, contemplated two motions to determine the legal issues.
27. The purpose of the proposed litigation process and schedule was twofold:
- (a) To provide a structure and timeline within which the parties could attempt to negotiate a settlement; and
 - (b) To provide a process for the determination of certain threshold legal issues that:
 - (i) Must be determined prior to any distribution of Estate Funds to creditors; and
 - (ii) May establish boundaries that will assist the parties to reach a negotiated settlement, and avoid or at least delay the cost of determining other fact-laden issues.
28. The parties submitted to the Court that proceeding in this fashion provided a cost-effective process to deal with key "gating issues" while attempting to preserve the Estate Funds and thereby protect the pension plan beneficiaries and other creditors, and avoid giving any party an opportunity to create leverage through the threat of advancing expensive factual issues when the resolution of one or more narrow issues of law could resolve matters more expeditiously and economically.

29. On June 10, 2013, Justice Campbell approved the second order providing for a bifurcated litigation schedule (the “**May 31 Order**”).
30. The first of the two motions contemplated by the May 31 Order (the “**July 24 Motion**”) sought the Court’s advice and direction on the following two legal issues:
 - (a) Whether or not the beneficiaries of the Executive Plan are precluded from asserting a deemed trust over any accounts or inventory of Indalex and their proceeds as a result of the doctrine of *res judicata*; and
 - (b) Whether the US Trustee is entitled to claim interest and costs in respect of the DIP Loan and whether such claim is entitled to priority over all claims, other than any claims secured by the Directors’ Charge.
31. On June 21, 2013, the Monitor filed the Twenty-First Report setting forth a factual basis for the July 24 Motion.
32. The second of the two motions contemplated by the May 31 Order, to be heard on a date to be set by the Court, was to seek the Court’s advice and direction on the following legal four issues:
 - (a) Unless the Court has determined that the Executive Plan members cannot advance a deemed trust claim against any accounts or inventory of Indalex or their proceeds, whether the deemed trust claimed by the Executive Plan arising from the wind-up order dated August 27, 2010, with an effective date of September 30, 2009, is enforceable against any accounts or inventory of Indalex or their proceeds;

- (b) What would be the effect of a bankruptcy order on the existence, enforceability and priority of the deemed trust in favour of the Salaried Plan and, subject to the decision of the Court with respect to the First Motion, the deemed trust asserted by the Executive Plan members;
 - (c) Whether the beneficiaries of the Salaried Plan or, unless the Court has decided that the beneficiaries of the Executive Plan are precluded from asserting a deemed trust over any accounts or inventory of Indalex or their proceeds, the Executive Plan are “secured creditors” of Indalex for purposes of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and, if so, what would the priority of such claims be in a bankruptcy of Indalex; and
 - (d) Whether the administrator of the Salaried Plan and the administrator of the Executive Plan are “secured creditors” of Indalex for purposes of the BIA and, if so, what would the priority of such claims be in a bankruptcy of Indalex.
33. The motions contemplated by the May 31 Order and described above were intended, in the absence of a negotiated settlement, to determine some, but not all, of the legal issues that would need to be determined prior to distributing the Estate Funds and were chosen, in part, because they do not require substantial findings of fact.
34. It was anticipated that, in the absence of a negotiated settlement, prior to any distribution being made it would also be necessary to obtain a determination of, *inter alia*, the following additional legal and factual issues:
- (a) Whether accounts or inventory that were located outside of Ontario and the proceeds thereof are covered by the deemed trust created pursuant to section 57(4) of the PBA;

- (b) Whether members of the Salaried Plan and the Executive Plan that are not Ontario residents are entitled to the benefit of the deemed trust created pursuant to section 57(4) of the PBA;
 - (c) What is the actual amount of the wind-up deficiency of the Salaried Plan and the Executive Plan under the PBA;
 - (d) What amount of the funds held by the Monitor is proceeds of accounts and inventory as referenced in section 30(7) of the Ontario PPSA; and
 - (e) Whether the Sun Claim is valid and enforceable and has priority.
35. Notwithstanding the efforts of the Monitor and the primary stakeholders to identify all of the potential legal and factual issues, it is possible that additional issues might be identified and, absent a negotiated settlement, require determination by the Court.

THE SETTLEMENT AGREEMENT

36. At the return of the July 24 Motion, the Court was informed that Sun, the US Trustee, the Pension Administrators, the Superintendent, the Retired Executives and the USW had reached an agreement on the terms of a settlement, subject to documentation, the US Trustee obtaining US Court approval to enter into the Settlement Agreement and approval by the Court. Consequently, the July 24 Motion was adjourned.
37. On September 13, 2013, the Settlement Agreement was executed. The key terms of the Settlement Agreement are summarized as follows:
- (a) Distribution of \$1,405,000 as follows:
 - (i) The sum of \$350,000, payable to Koskie Minsky LLP, in trust for the Retired Executives;

- (ii) The sum of \$285,000, inclusive of applicable taxes, to Koskie Minsky LLP as partial reimbursement of the legal costs of the Retired Executives;
 - (iii) The aggregate sum of \$15,000, payable in equal amounts of \$3,750 directly to each of the four members of the Executive Plan who is not a Retired Executive, subject to any applicable statutory withholdings;
 - (iv) The sum of \$650,000, payable to the Pensions Administrator on behalf of and for deposit into the Salaried Plan; and
 - (v) The sum of \$105,000, payable to the USW on behalf of the seven members of the Salaried Plan whom it represents;
- (b) The foregoing payments shall be made in full and final compromise and in satisfaction of all rights and claims against the Applicants, the US Debtor and any other person or entity in respect of any insufficiency of funding of the Executive Plan and the Salaried Plan, including, without limitation, all claims advanced by the USW and the Retired Executives (including any claims in respect of or related to the Directors' Charge and D&O Claims), including any and all deemed trusts and liens that could be advanced on behalf of:
- (i) The Executive Plan and the Salaried Plan;
 - (ii) All beneficiaries of the two pension plans; and
 - (iii) The Superintendent

- (c) The balance of funds held by the Monitor, subject to a reasonable reserve for its fees and expenses and those of its counsel, will be paid to the US Trustee on behalf of the bankruptcy estates of the US Debtors without prejudice to the claims and liens, if any, of Sun and its affiliates and the claims and responses, if any, of the US Trustee and other parties in those proceedings;
- (d) The USW and the Retired Executives have agreed that they will withdraw the claims they filed against the directors and officers of the Applicants (the “**D&O’s**”) in response to the Claims Procedure (the “**D&O Claims Process**”), and the Retired Executives and the USW shall have no right to file or refile any claim in the D&O Claims Process;
- (e) The parties to the Settlement Agreement will consent to the issuance of an order approving the D&O Motion and:
 - (i) Declaring that none of the D&O Claims received by the Monitor (excluding the D&O Claim filed by the Retired Executives and the draft D&O Claim filed by the USW which are both being withdrawn in accordance with the Settlement Agreement) 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; and
 - (ii) Terminating, discharging and releasing the Directors’ Charge from against the Property (as defined in the Amended Amended and Restated Initial Order);

- (f) Each of the parties to the Settlement Agreement will release each other and the Monitor and each of their respective affiliates, directors, officers, shareholders, agents, accountants, lawyers, financial advisors, and each of the respective heirs, executors, administrators, successors, assigns and personal representatives of the foregoing from any claims;
- (g) The Superintendent has agreed, despite any previous orders or directions to the contrary, that the Salaried Plan Administrator will not make any payment of surplus arising on any prior partial wind-up of the Salaried Plan, including without limitation the partial plan wind-ups declared effective December 31, 1989 and July 13, 1998; and
- (h) The Approval Order (as defined in the Settlement Agreement) shall provide that the Pensions Administrator shall have no liability as a result of entering into the Settlement Agreement, performing any of its obligations set forth in the Settlement Agreement or taking any actions contemplated by the Settlement Agreement; provided that the Pensions Administrator shall not be released from any claims, demands, or proceedings arising from any act or omission in the performance of such obligations, or in the taking of any action, which is due to wilful misconduct, gross negligence or fraud.

38. The Settlement Agreement is conditional upon:

- (a) The US Trustee having obtained US Court approval of its acceptance of the terms of the Settlement Agreement¹ (the “**US Trustee Acceptance Order**”);
- (b) The Approval Order being made on the terms set out in this Settlement Agreement and such other terms as are agreed to by the Parties; and

¹ The Settlement Agreement itself is not subject to US Court approval.

- (c) All time limits for appeal from the Approval Order having expired without an appeal being commenced.
39. The US Trustee's motion seeking the granting of the US Trustee Acceptance Order by the US Court was filed on September 18, 2013. The deadline for the filing of objections was October 3, 2013. No objections were filed, however, Sun filed a reservation of rights with the US Court in order to preserve any rights it might have against the US Trustee and any other parties to the Ch. 11 Proceedings. The US Trustee Acceptance Order was granted by the US Court on October 10, 2013.
40. The Settlement Agreement provides that the Salaried Plan will be amended to provide that the USW and the seven members of the Salaried Plan whom it represents shall have no entitlement to share in or receive any portion of the \$650,000 contemplated to be paid into the Salaried Plan pursuant to the Settlement Agreement (the "**Amendment**"). The Salaried Plan Administrator intends to bring a motion seeking court approval of the Amendment to be heard in conjunction with the Settlement Approval Motion.

THE MONITOR'S ASSESSMENT OF THE SETTLEMENT AGREEMENT

41. As described earlier in this report, absent a settlement, the issues that would have to be determined before a distribution of the Estate Funds could be made are complex and extensive. In the Monitor's view, litigation of those issues would be costly and would require months, if not years, before all necessary hearings could be completed and appeal rights exhausted.
42. As noted previously, there is a potential scenario where there could be funds available for distribution to the unsecured creditors, however, the likelihood of such a scenario materializing is remote and could only occur after lengthy and costly litigation.

43. Without commenting on the merits of the positions advanced by the various parties, but taking into account all of the circumstances of this case, the Monitor believes that the terms of the Settlement Agreement are reasonable.
44. Accordingly, the Monitor respectfully recommends that the Settlement Agreement be approved and the Approval Order issued.

REQUEST FOR ORDER IN RESPECT OF D&O CLAIMS AND D&O CHARGE

45. The D&O Motion heard on November 10, 2010, sought approval of an Order:
 - (a) Declaring that none of the D&O Claims 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; and
 - (b) Terminating, discharging and releasing the Directors' Charge from the Property (as defined in the Amended Amended and Restated Initial Order).
46. The D&O Motion was heard by Justice Campbell on November 10, 2010, who reserved his decision pending release of the SCC Decision.
47. The only parties to oppose the D&O Motion were the USW and the Retired Executives. Pursuant to the Settlement Agreement, the USW and the Retired Executives have agreed:
 - (a) To withdraw the claims they filed in response to the D&O Claims Process; and
 - (b) That they shall have no right to file or refile any claim in the D&O Claims Process.

48. Counsel to the D&O's appeared at the hearing of the D&O Motion and took no position on the outcome of the D&O Motion. In order to ensure that the D&O's have been given adequate notice of the Settlement Approval Motion, the Monitor will serve copies of the Settlement Approval Motion motion materials, including a copy of this Report, on Canadian counsel to the D&O's, and also on U.S. counsel to some of the D&O's. In addition, the Monitor will post the materials on the Monitor's website.
49. Pursuant to the Settlement Agreement, Sun, the Pensions Administrator, the Superintendent, the US Trustee, the USW and the Retired Executives have each consented to the issuance of an order (the "**D&O Charge Order**") granting the D&O Motion:
- (a) Declaring that none of the D&O Claims received by the Monitor 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; and
 - (b) Terminating, discharging and releasing the Directors' Charge from the Property.
50. The discharge and release of the D&O Charge is necessary to enable the distributions contemplated by the Settlement Agreement to be made and the CCAA Proceedings to be terminated.
51. Accordingly, the Monitor respectfully recommends that the D&O Charge Order be granted by this Honourable Court.

REQUEST FOR AUTHORIZATION TO MAKE DISTRIBUTIONS

52. As noted earlier in this report, the Monitor continues to hold the Estate Funds of approximately \$5 million in total.

53. Paragraph 11(a) of the Amended Amended and Restated Initial Order prohibits the Applicants from making any payment of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the CCAA filing date until future order of the Court.
54. If the Approval Order is granted and the D&O Charge Order is granted, there will be no further impediment to the distribution of the Estate Funds held by the Monitor. Accordingly, the Monitor seeks an Order authorizing and directing the Monitor to make the distributions mandated by the Settlement Agreement.

MONITOR'S ACTIVITIES

55. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and Court-ordered duties and obligations. The Monitor has described the more significant matters that it has been involved in since the commencement of the CCAA Proceedings in its previous reports filed with the Court. The more significant matters that the Monitor has undertaken include, but are not limited to, the following:
- (a) Assisting with the preparation of cash flow forecasts;
 - (b) Monitoring the receipts and disbursements of the Applicants;
 - (c) Monitoring, reviewing and reporting on the Applicants' efforts to obtain debtor-in-possession financing ("**DIP Financing**");
 - (d) Participating in negotiations among the Applicants and the Senior Secured Lenders (as that term is defined in the Monitor's First Report dated April 8, 2009) to establish the terms of the DIP Financing;
 - (e) Considering and reporting to the Court on the selection of a DIP lender;

- (f) Monitoring and reporting on the status and progress of the Ch. 11 Proceedings;
- (g) Evaluating and recommending the approval of a cross-border protocol to facilitate the co-ordination and efficient administration of the CCAA Proceedings and the Ch. 11 Proceedings;
- (h) Analyzing and reporting on proposed amendments to the Initial Order and the DIP Facility;
- (i) Monitoring, reporting on and participating (to the extent appropriate) in the Marketing Process which included a “stalking-horse” sales process with a break fee and bidding procedures;
- (j) Evaluating and recommending the approval of the engagement of Jefferies & Company, Inc. to assist with the conduct of the Marketing Process;
- (k) Preparing a preliminary liquidation analysis to assist the Court in assessing the Sapa Transaction;
- (l) Settling working capital calculations and final purchase price adjustments relating to the Sapa Transaction;
- (m) Making an interim distribution of the proceeds of the Sapa Transaction to the DIP Lenders;
- (n) Conducting a Claims Procedure and approving or disallowing Claims and D&O Claims (as those terms are defined in Claims Procedure Order) pursuant thereto;
- (o) Exercising additional powers granted to the Monitor pursuant to the Monitor’s Powers Order in order to facilitate the orderly completion of the CCAA Proceedings and the winding up of the Applicants’ estates;

- (p) Participating in the conduct of appeals from the Deemed Trust Motions taken before the Court of Appeal and the SCC, also as described above; and
- (q) Participating in the negotiation of the Settlement Agreement.

REQUEST FOR APPROVAL OF FEES AND DISBURSEMENTS

56. Pursuant to paragraph 30 of the Amended Amended and Restated Order, the Monitor and counsel to the Monitor have been paid their fees and disbursements at their standard rates and charges by the Applicants as part of the costs of the CCAA Proceedings.
57. Paragraph 31 of the Amended Amended and Restated Order provides:
- “THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”
58. The Monitor and Stikeman Elliott LLP (the “**Monitor’s Counsel**”) have maintained detailed records of their professional time and costs. In contemplation of the conclusion of the CCAA proceedings, the Monitor now seeks approval of its fees and disbursements and those of the Monitor’s Counsel incurred to November 17, 2013, and the fees to be incurred thereafter in connection with completing the Monitor’s duties under the Approval Order and the completion of the CCAA proceedings.

59. The total fees and disbursements of the Monitor during the period from April 3, 2009, to November 17, 2013, amount to \$1,038,771.94 (the “**Monitor Fees and Disbursements**”), including \$910,299.50 for fees and \$128,472.44 for disbursements (all excluding applicable taxes). The time spent by Monitor personnel in the period is more particularly described in the affidavit of Nigel Meakin of the Monitor, sworn November 22, 2013, in support of the Monitor’s request for approval of its fees and disbursements. A copy of the affidavit of Nigel Meakin is attached hereto as **Appendix B**.

60. The total fees and disbursements of the Monitor’s Counsel during the period from April 3, 2009, to November 17, 2013, amount to \$1,734,515.49 (the “**Monitor’s Counsel Fees and Disbursements**”), including invoiced fees of \$1,685,457.58 and disbursements of \$49,057.91 (all excluding applicable taxes). The time spent by Monitor’s Counsel personnel in the period is more particularly described in the affidavit of Ashley Taylor, a partner of the Monitor’s Counsel, sworn November 21, 2013, in support of the Monitor’s request for approval of the Monitor’s Counsel fees and disbursements. A copy of the affidavit of Ashley Taylor is attached hereto as **Appendix C**.

61. The Monitor respectfully submits that the Monitor’s Fees and Disbursements and the Monitor’s Counsel Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in the CCAA Proceedings. Accordingly, the Monitor respectfully seeks the approval of the Monitor Fees and Disbursements and the Monitor’s Counsel Fees and Disbursements. In addition, the Monitor seeks approval for the additional fees and disbursements to be incurred after November 17, 2013 in connection with the execution of the Monitor’s duties under the proposed Approval Order and completing the CCAA Proceedings, including the fees and disbursements of the Monitor’s Counsel, and which, based on the information currently available, are not expected to exceed \$30,000.

ASSIGNMENT OF BSE LITIGATION

62. As of the date of the Initial Order, Indalex was the plaintiff in several pieces of litigation. Pursuant to the Sapa Transaction, certain of the litigation was assigned to Sapa and 14 matters remained with Indalex. A number of those matters had been settled by Indalex prior to the date of the Initial Order, with ongoing payments made to Indalex in satisfaction of those settlements post-filing. In addition, one matter was settled post-filing and the payment has since been received. A number of other matters have been abandoned post-filing where the Monitor was of the view that the future cost of litigation outweighed the likelihood of success and/or the chances of recovery.
63. Indalex currently has one remaining piece of litigation, which is against 992427 Ontario Inc. carrying on business as Basic Structure Engineering, Basic Structure Engineering Inc. and Edward Ulrich (collectively, the “**BSE Defendants**”) in the amount of \$1,116,426.58 (the “**BSE Litigation**”). Default judgment in the amount of \$1,116,426.58 was obtained on November 16, 2012.
64. In June 2013, counsel for Indalex attempted to arrange examinations in aid of execution, however, Edward Ulrich advised that he would not attend the examination and intended to retain counsel in order to seek to set aside the default judgment. On November 20, 2013, the Monitor was informed that the BSE Defendants had retained counsel. To date, no motion to set aside default judgment has filed or scheduled. Counsel for Indalex and counsel for the BSE defendants have commenced settlement discussions.
65. On November 14, 2013, the Monitor received a notice of sale under mortgage in respect of certain real property owned by Edward Ulrich (the “**Proposed Sale**”). The Proposed Sale is scheduled to take place on or after January 4, 2014. It is currently unknown what assets are available to satisfy the Default Judgment, if any.

66. In light of the fact that any net recovery from the Default Judgment will form part of the Estate Funds, the execution of the Settlement Agreement and the desire to wind up the CCAA Proceedings, the Monitor is of the view that it is appropriate to treat the claim and any proceeds recovered in a manner consistent with the treatment of the estate funds under the Settlement Agreement and, with the consent of Sun and the US Trustee, assign the cause of action and the Default Judgment to the US Trustee on behalf of the bankruptcy estates of the US Debtors without prejudice to the claims and liens, if any, of Sun and its affiliates and the claims and responses, if any, of the US Trustee and other parties in those proceedings (the “**Proposed Assignment**”). If no settlement is reached prior to the Proposed Assignment, the US Trustee can then determine whether and when to pursue the BSE Defendants. The Monitor will provide the BSE Defendants with notice of the Proposed Assignment in advance of the return date of the Settlement Approval Motion.

DISCHARGE OF MONITOR AND TERMINATION OF CCAA PROCEEDINGS

67. If the Settlement Agreement is approved, the making of the distributions provided for in the Settlement Agreement and the assignment of the BSE Litigation will be the only matters to be completed to finalize the CCAA Proceedings. Accordingly, the Monitor seeks an Order terminating the CCAA Proceedings and discharging the Monitor, to be effective on filing of the Monitor’s Completion Certificate.
68. The Monitor respectfully seeks the approval of an order approving the discharge of the Monitor and termination of the CCAA Proceedings effective as of the filing of the Monitor’s Completion Certificate.
69. The Stay Period currently expires on December 31, 2013. The Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to the date that the Monitor’s Completion Certificate is filed with the Court.

70. 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.
71. The Monitor therefore respectfully requests that this Honourable Court grant an extension of the Stay Period until the date that the Monitor's Completion Certificate is filed with the Court.

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

Dated this 22nd day of November, 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

Appendix A

The Settlement Agreement

(Available at <http://cfcanada.fticonsulting.com/indalex/reports.htm> or on request from the Monitor)

Appendix B

Affidavit of Nigel Meakin Sworn November 22, 2013

(Available at <http://cfcanada.fticonsulting.com/indalex/reports.htm> or on request from the Monitor)

Appendix C

Affidavit of Ashley Taylor Sworn November 21, 2013

(Available at <http://cfcanada.fticonsulting.com/indalex/reports.htm> or on request from the Monitor)

**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

SETTLEMENT AGREEMENT

WHEREAS Sun Indalex Finance, LLC ("**Sun**"), Morneau Shepell Ltd. ("**Morneau**") as administrator of the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the "**Executive Plan**") and the Retirement Plan for Salaried Employees of Indalex Limited and Related Companies (the "**Salaried Plan**"), United Steelworkers (the "**USW**"), George L. Miller (the "**US Trustee**") in his capacity as Chapter 7 Trustee of the bankruptcy estates of IH 2, Inc. (f/k/a Indalex Holding Corp.), IH 1, Inc. (f/k/a Indalex Holdings Finance Corp.), IH 3, Inc. (f/k/a Indalex Inc.), IH 4, Inc. (f/k/a Caradon Lebanon, Inc.) and IH 5, Inc. (f/k/a Dolton Aluminum Company, Inc.) (collectively, the "**US Debtors**"), and the group of fourteen (14) members of the Executive Plan represented by Koskie Minsky LLP and listed in the signature lines below (the "**Retired Executives**") have advanced secured and other priority claims against the Applicants senior to the claims of unsecured creditors.

AND WHEREAS the Superintendent of Financial Services (the "**Superintendent**") has supported claims brought by Morneau, USW and the Retired Executives in these proceedings.

AND WHEREAS Sun, Morneau, the Superintendent, the US Trustee, the USW, and the Retired Executives are referred to in this Settlement Agreement collectively as the "**Parties**" and each, individually, as a "**Party**".

AND WHEREAS the Parties have agreed to settle their claims and those asserted by each other on the terms and conditions set out in this Settlement Agreement.

AND WHEREAS FTI Consulting Canada ULC in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") pursuant to the Order of Morawetz J. dated April 3, 2009, in these proceedings, as amended and restated from time to time (the "**Initial Order**") intends to bring a motion to seek the approval of the Court of the terms of this Settlement Agreement.

THEREFORE in consideration of the payment to each Party of the sum of TEN (\$10.00) DOLLARS¹ and the mutual promises and covenants set out below, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Parties and the Monitor agree as follows:

1. As soon as practicable after the execution of this Settlement Agreement, the Monitor will bring a motion to the Court seeking the approval of this Settlement Agreement (the “**Approval Order**”). The motion will be made on notice to the Parties, the service list in the CCAA Proceedings and to all persons who delivered claims against any of the Applicants or delivered a D&O Claim that has not been finally resolved in accordance with the Claims Procedure Order granted July 30, 2009 (the “**Claims Procedure Order**”). In case of any inconsistency, the Approval Order sought will supersede all prior orders made in these proceedings.

2. This Settlement Agreement is conditional upon: (a) the Approval Order being made on the terms set out in this Settlement Agreement and such other terms as are agreed to by the Parties; and (b) all time limits for appeal from the Approval Order having expired. In the event that an appeal is taken from a decision of the Court to grant the Approval Order, then this Settlement Agreement shall not become binding and effective until the last appeal available or taken within applicable time limits is dismissed.

3. Each of the Parties supports and hereby irrevocably consents to the making of the Approval Order on the terms set out herein.

4. The Approval Order will authorize and direct the Monitor to distribute the sum of \$1,405,000 as follows:

- (a) the sum of \$350,000, to Koskie Minsky LLP, in trust for the Retired Executives;
- (b) the sum of \$285,000, inclusive of applicable taxes, payable to Koskie Minsky LLP, in trust, as partial reimbursement of the legal costs of the Retired Executives;
- (c) the aggregate sum of \$15,000, payable in equal amounts of \$3,750 directly to each of the four (4) members of the Executive Plan who is not a Retired Executive, subject to any applicable statutory withholdings;
- (d) the sum of \$650,000, payable to Morneau on behalf of and for deposit into the Salaried Plan; and
- (e) the sum of \$105,000, payable to the USW on behalf of the seven (7) members of the Salaried Plan whom it represents.

5. The precise allocation and payment mechanics of the distributions of the amount referred to in paragraph 4(a) above to the Retired Executives by Koskie Minsky LLP will be determined by Koskie Minsky LLP on behalf of each relevant Retired Executive in consultation with Morneau and the Superintendent, each acting reasonably, or otherwise as ordered by the Court.

¹ All references to money in this Settlement Agreement are to the lawful currency of Canada.

6. The precise payment mechanics of the distributions referred to in paragraph 4(c) above will be agreed by the Monitor, Morneau, the Superintendent and each relevant member of the Executive Plan who is not a Retired Executive, each acting reasonably, or otherwise as ordered by the Court.

7. The Approval Order will provide that, with the consent of Sun and the US Trustee, the remainder of the funds being held by the Monitor, except as set out in paragraph 8 below, will be paid to the US Trustee on behalf of the bankruptcy estates of the US Debtors without prejudice to the claims and liens, if any, of Sun and its affiliates and the claims and responses, if any, of the US Trustee and other parties in those proceedings.

8. The payment in paragraph 7 above will be subject to the Monitor's entitlement to withhold a reasonable reserve for its fees and disbursements and those of its counsel, including an estimated amount needed by the Monitor to obtain its discharge. Any funds remaining with the Monitor upon the Monitor's discharge shall be paid to the US Trustee in accordance with paragraph 7.

9. The Approval Order will provide that (a) the USW and the seven (7) members of the Salaried Plan whom it represents shall have no entitlement to share in or receive any portion of the funds referred to in paragraph 4 above, other than the amount referenced in paragraph 4(e); and (b) the Salaried Plan text shall be amended to provide that these seven (7) members of the Salaried Plan have no entitlement to share in or receive any portion of the funds referred to in paragraph 4(d).

10. The Approval Order will provide that the payment made pursuant to paragraph 4 above is a full and final compromise and accord and in satisfaction of all rights and claims, including any and all deemed trusts and liens, that could be advanced on behalf of the Executive Plan and the Salaried Plan and all beneficiaries of the two pension plans or the Superintendent against the Applicants, the US Debtors and any other person or entity in respect of any insufficiency of funding of the Executive Plan and the Salaried Plan (the "**Pension Claims**"). Without limiting the generality of the foregoing, Pension Claims includes all claims advanced by the USW and the Retired Executives (including, without limitation, any claims in respect of or related to the Directors' Charge, as defined in paragraph 22 of the Initial Order, and D&O Claims, as defined in the Claims Procedure Order). It is acknowledged that Bertram McBride, Eugene D'Iorio, and Robert Waldron are plaintiffs in separate litigation involving Mercer Canada Limited in relation to their pension benefits. Nothing in this Settlement Agreement or the Approval Order or any schedules attached thereto shall prevent or otherwise impact the rights of recovery by Mr. McBride, Mr. D'Iorio, or Mr. Waldron of any remedies available to them in that litigation, subject only to the preclusion against double-recovery.

11. The Retired Executives and the USW will withdraw the claims they filed in response to the D&O Claims Process approved by the Order of Justice Morawetz dated July 30, 2009 (the "**D&O Claims Process**"), and the Retired Executives and the USW shall have no right to file or refile any claim in the D&O Claims Process. The Parties will consent to the issuance of an order granting the Monitor's motion returnable November 10, 2010, (a) declaring that none of the D&O Claims received by the Monitor (excluding the D&O Claim filed by the Retired Executives and the draft D&O Claim filed by the USW which are both being withdrawn in accordance with

this Settlement) are claims for which the Applicants are required to indemnify their directors and officers pursuant to paragraph 21 of the Initial Order; and (b) terminating, discharging and releasing the Directors' Charge from the Property (as defined in the Initial Order).

12. Each of the Parties hereby remises, releases and forever discharges each of the other Parties, the Monitor and each of their respective affiliates, directors, officers, shareholders, agents, accountants, lawyers, financial advisors, and each of the respective heirs, executors, administrators, successors, assigns and personal representatives, as the case may be, of each of the foregoing (collectively, the "**Releasees**"), of and from any and all actions, causes of action, suits, proceedings, debts, sums of money, obligations, duties, dues, accounts, interests, bonds, contracts, covenants, claims, losses, damages, liabilities, judgments, costs, expenses and demands, including, without limitation, all manner of claims which it ever had, now has, or hereafter can, shall or may have, arising, out of or in any way related to or connected with the Executive Plan and the Salaried Plan, the Releasees' obligations to the Executive Plan and the Salaried Plan, all acts or omissions made or due by each of the Releasees in connection with the Executive Plan and the Salaried Plan, all acts and omissions in this proceeding, all negotiations between and among any of the Releasees and their conduct in entering into this Settlement Agreement other than claims for the amounts set out in paragraphs 4 and 7 hereof. The Approval Order will also provide releases in favour of all of the Releasees in respect of all such matters. The releases herein and in the Approval Order expressly except and do not release any claims made by Sun and any of its affiliates, on the one side, and the US Trustee, on the other side, against one another. Rather all such claims and all responses thereto shall survive and are not affected by the terms of this Settlement Agreement or the Approval Order.

13. The Superintendent agrees, despite any previous orders or directions to the contrary, that Morneau shall not make any payment of surplus arising on any prior partial wind-up of the Salaried Plan, including without limitation the partial plan wind-ups declared effective December 31, 1989 and July 13, 1998. The revised wind-up report to be filed by Morneau with respect to the Salaried Plan shall reflect the treatment of historical surplus in accordance with this Settlement Agreement.

14. The Approval Order shall provide that Morneau shall have no liability as a result of entering into the Settlement Agreement, performing any of its obligations set forth in the Settlement Agreement or taking any actions contemplated by the Settlement Agreement; provided that Morneau shall not be released from any claims, demands, or proceedings arising from any act or omission in the performance of such obligations, or in the taking of any action, which is due to wilful misconduct, gross negligence or fraud.

15. The effectiveness of the acceptance of the terms of this Settlement Agreement by the US Trustee requires the approval of the US Bankruptcy Court. The US Trustee will seek such approval at its own expense as soon as practicable upon the execution of this Settlement Agreement. In the event this Settlement Agreement is not, by November 29, 2013, approved by the U.S. Bankruptcy Court pursuant to an order which is final and not subject to appeal (the "**US Approval Order**"), or such other date as may be agreed by the Parties, then this Settlement Agreement shall be null and void and of no effect. The Approval Order will provide that the terms of this Settlement Agreement and the other provisions of the Approval Order shall be conditioned upon entry of the US Approval Order.

16. This Settlement Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

17. This Settlement Agreement constitutes the entire agreement among the Parties concerning its subject matter and supersedes all other prior agreements and undertakings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof. No amendment to this agreement shall be valid unless it is made in writing and signed on behalf of each of the Parties.

18. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Settlement Agreement to produce more than one counterpart.

IN WITNESS WHEREOF, the Parties, by their lawyers, have executed this Settlement Agreement effective as of the 13th day of September, 2013.

Sun Indalex Finance, LLC, by its lawyers
Goodmans LLP

Per: [Signature]
Name: F. MEARS
Title: PARTNER

Morneau Shepell Ltd., as administrator of the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies and the Retirement Plan for Salaried Employees of Indalex Limited and Related Companies, by its lawyers Cavalluzzo Shilton McIntyre & Cornish LLP

Per: _____
Name:
Title:

United Steelworkers, by its lawyers Sack Goldblatt Mitchell LLP

Per: _____
Name:
Title:

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Sun Indalex Finance, LLC, by its lawyers
Goodmans LLP

Per: _____

Name:

Title:

Morneau Shepell Ltd., as administrator of the
Retirement Plan for Executive Employees of
Indalex Limited and Associated Companies and
the Retirement Plan for Salaried Employees of
Indalex Limited and Related Companies, by its
lawyers Cavalluzzo Shilton McIntyre & Cornish
LLP

Per:  _____

Name: "Hugh M. B. O'Reilly"

Title: Partner

United Steelworkers, by its lawyers Sack Goldblatt
Mitchell LLP

Per: _____

Name:

Title:

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Sun Indalex Finance, LLC, by its lawyers
Goodmans LLP

Per: _____
Name:
Title:

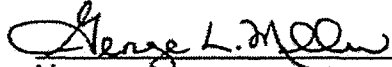
Morneau Shepell Ltd., as administrator of the
Retirement Plan for Executive Employees of
Indalex Limited and Associated Companies and
the Retirement Plan for Salaried Employees of
Indalex Limited and Related Companies, by its
lawyers Cavalluzzo Shilton McIntyre & Cornish
LLP

Per: _____
Name:
Title:

United Steelworkers, by its lawyers Sack Goldblatt
Mitchell LLP

Per: Darrell Brown
Name: Darrell Brown
Title: Partner, SGM LLP

George L. Miller, in his capacity as Chapter 7 Trustee of the bankruptcy estates of IH 2, Inc. (f/k/a Indalex Holding Corp.), IH 1, Inc. (f/k/a Indalex Holdings Finance Corp.), IH 3, Inc. (f/k/a Indalex Inc.), IH 4, Inc. (f/k/a Caradon Lebanon, Inc.) and IH 5, Inc. (f/k/a Dolton Aluminum Company, Inc.), by his lawyers Chaitons LLP

Per: 
Name: GEORGE L. MILLER
Title: CHAPTER 7 TRUSTEE

Frederick John Granville, Richard Nelson Benson, Leon Kozierok, Keith Burton Carruthers, Robert B. Leckie, Max Degen, Bertram Gerald Arthur McBride, Eugene John D'Iorio Jr., John William Rooney, John Eugene Faveri, Richard Donald Smith, Neil Edward Fraser, Robert Kenneth Waldron, by their lawyers Koskie Minsky LLP.

Per: _____
Name:
Title:

The Superintendent of Financial Services

Per: _____
Name:
Title:

George L. Miller, in his capacity as Chapter 7 Trustee of the bankruptcy estates of IH 2, Inc. (f/k/a Indalex Holding Corp.), IH 1, Inc. (f/k/a Indalex Holdings Finance Corp.), IH 3, Inc. (f/k/a Indalex Inc.), IH 4, Inc. (f/k/a Caradon Lebanon, Inc.) and IH 5, Inc. (f/k/a Dolton Aluminum Company, Inc.), by his lawyers Chaitons LLP

Per: _____

Name:

Title:

Frederick John Granville, Richard Nelson Benson, Leon Kozierok, Keith Burton Carruthers, Robert B. Leckie, Max Degen, Bertram Gerald Arthur McBride, Eugene John D'Iorio Jr., John William Rooney, John Eugene Faveri, Richard Donald Smith, Neil Edward Fraser, Robert Kenneth Waldron, Douglas Williams by their lawyers Koskie Minsky LLP.

Per: _____

Name: **ANDREW HATNAY**

Title: **PARTNER**

The Superintendent of Financial Services

Per: _____

Name:

Title:

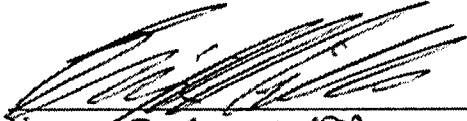
George L. Miller, in his capacity as Chapter 7 Trustee of the bankruptcy estates of IH 2, Inc. (f/k/a Indalex Holding Corp.), IH 1, Inc. (f/k/a Indalex Holdings Finance Corp.), IH 3, Inc. (f/k/a Indalex Inc.), IH 4, Inc. (f/k/a Caradon Lebanon, Inc.) and IH 5, Inc. (f/k/a Dolton Aluminum Company, Inc.), by his lawyers Chaitons LLP

Per: _____
Name:
Title:

Frederick John Granville, Richard Nelson Benson, Leon Kozierok, Keith Burton Carruthers, Robert B. Leckie, Max Degen, Bertram Gerald Arthur McBride, Eugene John D'Iorio Jr., John William Rooney, John Eugene Faveri, Richard Donald Smith, Neil Edward Fraser, Robert Kenneth Waldron, by their lawyers Koskie Minsky LLP.

Per: _____
Name:
Title:

The Superintendent of Financial Services

Per: 
Name: Brian Mills
Title: Deputy Superintendent,
Pensions