IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 7
	)	
IH 1, Inc., f/k/a Indalex Holdings Finance, Inc.; IH 2, Inc. f/k/a Indalex, Inc.; IH 3, Inc. f/k/a Indalex Holding Corp.; IH 4, Inc. f/k/a Caradon Lebanon, Inc.; and IH 5, Inc. f/k/a Dolton Aluminum Company, Inc.,	)	Case No. 09-10982(PJW) (Jointly Administered)
Debtors.	)	
_____	)	
George L. Miller, in his capacity as Chapter 7 Trustee of the bankruptcy estates of IH 1, IH 2, Inc., IH 3, Inc., IH 4, Inc. and/or IH 5, Inc.,	)	Adv. Proc. No. 11-51329(PJW)
Plaintiff,	)	
v.	)	
Metal Exchange Corporation,	)	
Defendant.	)	

MEMORANDUM OPINION

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Dated: December 30, 2011

WALSH, J.

This opinion is with regard to the Motion of George L. Miller, Chapter 7 Trustee, for Leave to File Amended Complaint Pursuant to Federal Rule of Civil Procedure 15, as Incorporated by Federal Rule of Bankruptcy Procedure 7015, and for Finding That Filing of Amended Complaint Relates Back to Filing of Original Complaint. (Doc. # 9.) For the reasons described below, I will grant the motion.

Background

On or about March 20, 2009, IH 1, Inc., IH 2, Inc. ("IH 2"), and several related companies (collectively "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. § § 101 et seq.[1] (Case No. 09-10982(PJW).) All of the cases were later converted to chapter 7, and George L. Miller ("Plaintiff") was appointed as chapter 7 trustee in October 2009. (Pl.'s Br. ¶ 5.)

On March 14, 2011, Plaintiff filed a complaint (the "Complaint") against Metal Exchange Corporation ("Defendant") seeking to avoid and recover preferential transfers pursuant to § § 547(b)[2] and 550[3] of the Bankruptcy Code. (Doc. # 1.) An amended

[1]The facts outlined in this background section are derived from Plaintiff's Brief in Support of the Motion, Defendant's Response in Opposition to Plaintiff's Motion (Doc. # 12), and their supporting exhibits, as noted.

[2]Section 547(b) provides, in relevant part, that

> the trustee may avoid any transfer of an interest of the debtor in property —

complaint ("Amended Complaint") was filed on May 20, 2011. (Doc. # 4.) The Amended Complaint was required because of a formatting error in the Complaint. (Pl.'s Br. ¶ 7 n. 2.) In both complaints, Defendant is named as the sole defendant.

Plaintiff is seeking to avoid approximately $1.1 million in allegedly preferential transfers made by IH 2. (Am. Compl. ¶ 14.) In identifying the parties to the action, Plaintiff states the following: "Upon information and belief, Defendant transacts business both in the name of 'Metal Exchange Corporation' and in the name of 'Pennex Aluminum Company.' Upon information and belief, Pennex Aluminum Company is a trade name of Defendant and is not a separate legal entity." (Id. ¶ 9.)

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(1) to or for the benefit of a creditor
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made
(3) made while the debtor was insolvent
(4) made —
    (A) on or within 90 days before the date of the filing of the petition . . .; and
(5) that enables such creditor to receive more than such creditor would receive if —
    (A) the case were a case under chapter 7 of this title;
    (B) the transfer had not been made; and
    (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b)(1)-(5) (2010).

[3] Section 550(a) provides that where a transfer is avoided under § 547, "the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made." 11 U.S.C. § 550(a)(1).

Count One of the Complaint reads, in pertinent part, as follows:

> 11. Prior to the Petition Date, Debtor IH 2, Inc. f/k/a Indalex, Inc. (hereafter, the "Debtor") transacted business with the Defendant, on account of which the Debtor was indebted to the Defendant. **The Defendant transacted business with the Debtor both as "Metal Exchange Corporation" and doing business as "Pennex Aluminum Company." Separate invoicing and billing were used for the Defendant's transactions with the Debtor as Pennex Aluminum Company.**
>
> 12. **The Defendant, operating as Metal Exchange Corporation,** received payment from the Debtor within the 90-day period immediately preceding the Petition Date in the total amount of $1,022,212.35 ("the Metal Exchange Preference Payments"), as set forth in more detail in Exhibit A attached hereto and incorporate herein by reference.
>
> 13. **The Defendant, operating as Pennex Aluminum Company,** also received payment from the Debtor within the 90-day period immediately preceding the Petition Date in the total amount of $ 89,505.00 ("Pennex Preference Payments" and collectively with the Metal Exchange Preference Payments, the "Preference Payments"), as set forth in more detail in Exhibit B attached hereto and incorporate herein by reference.

(Compl. ¶ ¶ 11-13) (emphasis added.) Paragraphs 11, 12, and 13 of the Amended Complaint are the same as the Complaint.

In January 2011, prior to filing the Complaint, Plaintiff sent two demand letters (the "Demand Letters"), one addressed to Defendant as "Metal Exchange Corporation" and one addressed to "Pennex Aluminum Company," regarding the allegedly preferential transfers. (Pl.'s Ex. C.) Plaintiff received no response from Defendant, but a response letter (the "Response Letter") was sent by Bryan Cave LLP ("Bryan Cave") on behalf of "Pennex Aluminum

Company." (Pl.'s Ex. D.) The Response Letter states that Bryan Cave "represent[s] Pennex Aluminum Company" and asserts affirmative defenses to the preference actions under § § 547(c)(2) and (c)(4).[4] (Id.)

Although it did not respond on behalf of Defendant, Bryan Cave is also representing Defendant in these cases. On June 14, 2011, Defendant filed its answer to the Amended Complaint (the "Answer"), which Answer was signed by Bryan Cave as counsel. (Doc. # 7.) Paragraph 9 of the Answer, responding to paragraph 9 of the Amended Complaint, reads:

> Metal Exchange states that, at all times material to the Complaint, it transacted business with Indalex, Inc. (the "Debtor") only in the name of "Metal Exchange Corporation." **Metal Exchange states that Pennex Aluminum Company, LLC** ("Pennex Aluminum") **is a Missouri limited liability company.** Except as so stated, Metal Exchange denies the allegations contained in paragraph 9.

(Answer ¶ 9)(emphasis added.) Paragraph 11 repeats the averment that "at all times material to the [Amended] Complaint, it transacted business with the Debtor only in the name of 'Metal Exchange Corporation,' on account of which the Debtor was indebted to Metal Exchange." (Id. ¶ 11.)

On September 2, 2011, Plaintiff filed this Motion for leave to file a Second Amended Complaint naming Pennex Aluminum

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[4]Section 547(c) states that the trustee may not avoid a transfer where such transfer was made in the ordinary course of business or for new value extended by the creditor after the transfer occurred. 11 U.S.C. § 547(c)(2) & (4).

Company, LLC ("Pennex") as a separate defendant. Plaintiff alleges that he did not realize that Pennex was a legal entity separate from Defendant until Defendant filed its Answer, and so now seeks to add Pennex to the adversary action under Federal Rule of Civil Procedure 15(a). Further, Plaintiff requests a finding that the amendment would relate back to the original filing date pursuant to Federal Rule 15(c), as the statute of limitations[5] has run on the claim against Pennex.

Jurisdiction

This court has jurisdiction over this proceeding pursuant to 28 U.S.C. § § 1334 and 157(b)(2)(F).

Discussion

Federal Rule 15 governs the amendment of pleadings. Rule 15(a) provides that, where a party has already amended once as a matter of course, the "party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Where such amendment "changes the party or the naming of the party against whom a claim is asserted," the amendment relates back to the date of the original pleading if three conditions are met:

[5]The limitations period for a § 547 action is two years following the entry of the order for relief. 11 U.S.C. § 546(a)(1)(A). In this case, the limitations period expired for this adversary proceeding on March 20, 2011, two years after the filing of the petitions.

> (1) the amendment asserts a claim arising out of the same transaction or occurrence described in the original pleading (Rule 15(c)(1)(B));
>
> (2) the party to be brought in by amendment "received such notice of the action [within 120 days of the filing] that it will not be prejudiced in defending on the merits" (Rule 15(c)(1)(C)(i)); and
>
> (3) within the same 120-day period, the party "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." (Rule 15(c)(1)(C)(ii))

In considering Plaintiff's Motion, I must determine whether, under Rule 15(a)(2), Plaintiff should be given leave to further amend his Amended Complaint by adding Pennex as a defendant, and whether such amendment will relate back to the original filing date of the Complaint, March 14, 2011, under Rule 15(c). Because the limitations period has expired, Plaintiff's proposed amendment will only be worthwhile if the amendment relates back to the original date of filing. If Rule 15(c) is not satisfied and there is no relation back, leave to amend should not granted, as the amendment would be futile. See Garvin v. City of Phila., 354 F.3d 215, 222 (3d Cir. 2003) (noting that where the court found that the plaintiff's amended complaint would not relate back, the amendment "would have been futile because the amended complaint could not have withstood a motion to dismiss on the basis of the statute of limitations.") Thus, I must first determine whether Plaintiff's proposed amendment would relate back to March 14, 2011, the original date of filing.

Relation Back

Plaintiff's Second Amended Complaint will relate back to the original filing date of March 14, 2011, only if three conditions are met: 1) the claim against Pennex arises out of the same transaction, occurrence, or conduct set out in the Complaint; 2) Pennex received notice of the action within 120 days of filing; and 3) Pennex knew or should have known that it would have been named as a defendant but for a mistake concerning Pennex's identity. The parties dispute only the third condition, but all three must be met in order for the Second Amended Complaint to relate back.

The first condition is clearly satisfied here. The Complaint and the Amended Complaint seek the avoidance of certain transfers made both to Defendant and to Pennex. Reference is made to the transfers to Pennex in paragraph 13 of both complaints, and the transfers are listed in Exhibit B attached to both complaints. Thus, the claim that Plaintiff seeks to add against Pennex clearly arises from the transactions detailed in the original complaints.

With regard to the second condition, Plaintiff alleges that Pennex received both actual and constructive notice of the action within 120 days of filing. As documented in Plaintiff's Exhibit A, the Amended Complaint was served on Edward O. Merz ("Merz") as Defendant's registered agent on May 20, 2011 — less than 120 days after the filing of the original Complaint on March

14, 2011.[6] Merz is also the registered agent for Pennex, as specified on Pennex's registration with the Missouri Secretary of State. (Pl.'s Ex. H.) Merz's listed address is identical for both Defendant and Pennex: 111 West Port Plaza, St. Louis, MO 63146, the same address that Defendant cites as its business address in the Answer. (Id.) Plaintiff also argues that notice can be imputed to Pennex because Pennex is affiliated with Defendant and both companies are represented by the same law firm, Bryan Cave. (Br. at ¶ 31.)

As Plaintiff points out, courts have found constructive notice sufficient to satisfy the second condition of 15(c)(1)(C) where the parties share an attorney. See Miller v. Hassinger, 173 Fed. App'x 948, 956 (3d Cir. 2006) (citing Singletary v. Pa. Dept. of Corrections, 266 F.3d 186(3d Cir. 2001); Garvin, 354 F.3d 215). According to the so-called "shared attorney" theory of imputing notice, "when an originally named party and the party who is sought to be added are represented by the same attorney, the attorney is likely to have communicated to the latter party that he may very well be joined in the action." Singletary, 266 F.3d at 196.

In this case, Pennex and Defendant are indeed represented by the same attorneys from Bryan Cave. It is clear from the Response Letter that Bryan Cave understood that Plaintiff

[6]A review of the docket shows that the Complaint was also served on Merz on May 16, 2011.

considered the transfers to Pennex to be avoidable transfers because it offered two affirmative defenses and attached supporting documentation. Given that both the Complaint and the Amended Complaint specifically name Pennex as the transferee for some of the transfers at issue, I think it very likely that Bryan Cave informed Pennex that it might be named as a party to the suit. Defendant argues that Pennex assumed that Plaintiff had accepted the defenses offered in the Response Letter when he did not file suit before the limitations period expired (Opp'n ¶ 14), but the listing of the Pennex transfers in the Complaint and Amended Complaint should have dispelled any such assumption. Therefore, notice can be imputed to Pennex on the basis of the "shared attorney" theory. Furthermore, I find that Pennex had actual notice of the filing of the Complaint and the Amended Complaint because Merz is the registered agent for both Defendant and Pennex. The second condition of 15(c)(1)(C) is clearly satisfied.

The central issue in this case is the third condition: whether Pennex knew or should have known that it would have been named as a defendant but for Plaintiff's mistake. Both parties cite to the Supreme Court's recent decision in Krupski v. Costa Crociere S.p.A., 130 S.Ct. 2485 (2010), which I find to be directly on point. In Krupski, the plaintiff, Wanda Krupski, sought compensation for injuries she sustained on board a cruise ship operated by Costa Crociere S.p.A ("Costa Crociere"). Krupski, 130

S.Ct. at 2490. Krupski's ticket, which explained how to seek redress for a personal injury claim, identified Costa Crociere as the owner and operator of the ships. Id. The ticket further provided that Costa Cruise Lines N.V. ("Costa Cruise") was the sales and marketing agent of Costa Crociere and the issuer of the ticket. Id. Notwithstanding this language on the ticket, Krupski filed suit naming Costa Cruise as the defendant, and alleged that Costa Cruise owned and operated the ship on which she was injured. Id. After the limitations period had expired, Costa Cruise stated in its answer that Costa Crociere was the actual owner and operator of the ship. Id. at 2491. Consequently, Krupski sought leave to amend her complaint to add Costa Crociere as a defendant. Id. The District Court for the Southern District of Florida denied Krupski's motion to amend, determining that Krupski had not made a mistake concerning the identity of the proper party. Id. at 2492. The Eleventh Circuit affirmed, noting that the information on Krupski's ticket should have left no doubt that Costa Crociere was the owner and operator, and thus was the proper party to name as defendant. Id. The Supreme Court reversed, holding that Krupski's knowledge was not the key inquiry; rather, the question was "whether Costa Crociere knew or should have known that it would have been named as a defendant but for an error." Id. at 2493. The Court noted that even when a plaintiff knows that a party exists, the plaintiff can still make a mistake as to that party's

status or what role it played in the occurrence giving rise to the claim. See id. at 2494. Further, the Court disagreed with the defendant's argument that "any time a plaintiff is aware of the existence of two parties and chooses to sue the wrong one, the proper defendant could reasonably believe that the plaintiff made no mistake." Id. Where the plaintiff's choice is founded on a misunderstanding about the proper defendant's status or role in the events at issue, Rule 15(c)(1)(C)(ii) could still be satisfied. Id. Turning to the case at hand, the Court concluded that

> [b]ecause the complaint made clear that Krupski meant to sue the company that 'owned, operated, managed, supervised and controlled' the ship on which she was injured . . . and also indicated (mistakenly) that Costa Crociere performed those roles, Costa Crociere should have known, within the [120 days after filing], that it was not named as a defendant in that complaint only because of Krupski's misunderstanding about which "Costa" entity was in charge of the ship – clearly a "mistake concerning the proper party's identity."

Id. at 2497. Thus, Rule 15(c)(1)(C)(ii) was satisfied, and the amendment related back to the original filing date. Id. at 2498.

Here, Plaintiff argues that, based on paragraph 9 of the complaints, which identify Pennex as a trade name of Defendant, and the Demand Letters sent to both Defendant and Pennex requesting return of the transfers, Pennex knew or should have known that Plaintiff would have named Pennex as a defendant had he not made a mistake about Pennex's separate legal status. (Br. ¶ 32.) Plaintiff further asserts that his confusion regarding Pennex's

legal status was caused by Pennex and Defendant. (Id. ¶ 33.) In particular, Plaintiff points to the Response Letter, in which Bryan Cave refers to Pennex as "Pennex Aluminum Company" rather than its full name "Pennex Aluminum Company, LLC." Plaintiff also draws attention to Pennex's website, which calls Pennex "a division of Metal Exchange Corporation" and also states that Pennex is "a part of the Metal Exchange Corporation" without mentioning Pennex's status as a legally distinct entity. (Pl.'s Ex. E.) Lastly, Plaintiff notes that the name "Pennex Aluminum Co." is registered with the Pennsylvania Department of State as a fictitious name owned by Defendant. (Pl.'s Ex. F.) As a result of these facts, Plaintiff alleges, he was confused about the true legal status of Pennex and thus was mistaken about its identity.

In response, Defendant first argues that Plaintiff has not met his burden in showing that Pennex knew or should have known it would have been named as a defendant absent Plaintiff's mistake. (Opp'n ¶ ¶ 12-17.) Defendant notes that Plaintiff sent two Demand Letters, one to each Defendant's and Pennex's separate corporate offices. The Demand Letters threatened Defendant and Pennex with litigation if they did not respond within 30 days. Defendant argues that, since Pennex sent the Response Letter to Plaintiff asserting two of the statutory affirmative defenses, Pennex interpreted Plaintiff's failure to file suit before the limitations period ran to mean that Plaintiff had accepted Pennex's defenses

and decided not to file suit. (Id. ¶ 14.) In other words, Defendant claims that Pennex did not realize that Plaintiff had made a mistake about Pennex's identity as a separate entity, but rather thought that Plaintiff had made a conscious, strategic decision not to litigate.

Next, Defendant questions whether Plaintiff was, in fact, mistaken about Pennex's identity as a separate entity. (Id. ¶ ¶ 16-17.) Defendant attempts to refute Plaintiff's claim of mistake by pointing to several facts that, according to Defendant, demonstrate Pennex's status as a separate legal entity and that were available to Plaintiff before the limitations period expired. Defendant cites Debtors' statement of financial affairs, which lists Pennex and Defendant as separate creditors with different corporate addresses; the Response Letter, which only addresses the transfers to Pennex and not those to Defendant; Pennex's website, which refers to Defendant as Pennex's "parent company"; and a registration for "Pennex Aluminum Company LLC" with the Pennsylvania Department of State, which Defendant claims "superseded" the fictitious name registration from an earlier date. (Id. ¶ 17.)

I find Defendant's first argument, that it believed that Plaintiff had accepted its affirmative defenses, untenable given the facts of this case. I note first that while the Demand Letter says Plaintiff will commence litigation if he does not receive a

response, it does not say that Plaintiff will *not* commence litigation if he *does* receive a response. Further, I note that the Response Letter was dated March 17, 2011 — three days after Plaintiff filed the original Complaint, in which Pennex is clearly identified as a transferee of the allegedly preferential transfers. Thus, Pennex cannot claim that it thought Plaintiff had accepted its affirmative defenses, because Plaintiff's Complaint sought the avoidance of those very transfers. Moreover, the Complaint states that Pennex is a trade name of Defendant and not a separate entity, and yet seeks to avoid the transfers to Pennex. This clearly illustrates that Plaintiff was mistaken about Pennex's proper identity, i.e. its status as a separate, legal entity from which Plaintiff could seek recourse. Regardless of what Pennex may have thought before the Complaint was filed, upon reading the Complaint, Pennex could not reasonably have continued to believe that Plaintiff made a fully informed decision not to add Pennex as a defendant. It is true that, as Defendant points out, courts have found that the third condition is not satisfied where the new party has "reason to believe that its omission from the initial complaint was a deliberate strategy, rather than an error in pleading." Kemp Indus., Inc. v. Safety Light Corp., Civ. A. No. 92-95(AJL), 1994 WL 532130, *13 (D.N.J. Jan. 25, 1994). But here, there could have been no such strategic decision. The only reasonable explanation for Plaintiff's seeking recovery of the Pennex transfers from

Defendant is Plaintiff's mistaken belief that Pennex was part of Defendant. Defendant has suggested no other reason, and I cannot imagine one. Thus Defendant must have known — or at least should have known — that Plaintiff's failure to name Pennex as a separate defendant was due merely to Plaintiff's erroneous belief that Pennex was only a trade name of Defendant.

With regard to Defendant's analysis of what Plaintiff knew or did not know, Krupski is unequivocal that such an inquiry is irrelevant, except to the extent that the information available to Plaintiff "bears on the defendant's understanding of whether the plaintiff made a mistake regarding the proper party's identity." Krupski, 130 S.Ct. at 2493-94. Krupski is clear that "[t]he reasonableness of [Plaintiff's] mistake is not itself at issue." Id. at 2494. Thus it is not for me to evaluate the information available to Plaintiff and determine whether it should have alerted him to Pennex's true status. I will note only that Plaintiff has pointed to a number of facts — such as the active registration of "Pennex Aluminum Co." as a fictitious name, Bryan Cave's reference to Pennex only as "Pennex Aluminum Company," and Pennex's website, which refers to Pennex as "part of" Defendant — that could have created confusion about whether Pennex was a separate company; these facts, coupled with the plain language of the Complaint and Amended Complaint, should have made Pennex aware that it would have been sued but for Plaintiff's mistake about Pennex's legal status.

Therefore, the third condition of Rule 15(c)(1)(C) has been met, and Plaintiff's amendment, if permitted, would relate back to the date of the Complaint.

Granting of Leave to Amend

The text of Rule 15(a)(2) provides that leave to amend should be granted "when justice so requires." "In the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. — the leave sought should, as the rules require, be 'freely given.'" Foman v. Davis, 371 U.S. 178, 182 (1962). While the inquiry requires the court to weigh a variety of factors, the Third Circuit has "recognized . . . that 'prejudice to the non-moving party is the touchstone for the denial of an amendment.'" Arthur v. Maersk, Inc., 434 F.3d 196, 204 (3d Cir. 2006) (quoting Cornell & Co. v. Occupational Safety & Health Review Comm'n, 573 F.2d 820, 823 (3d Cir.1978)).

I do not find evidence of any of the disqualifying factors in the case before me. Plaintiff has not unduly delayed in seeking amendment; the original Complaint was filed in March, Plaintiff became aware of Pennex's true legal status when the Answer was filed in June, and he filed his motion to amend in

September. Courts have found no delay where the plaintiff sought to amend eleven months after the original filing. See Maersk, 434 F.3d at 204-05. Here, only six months passed between the original filing and Plaintiff's Motion. Thus, I cannot find Plaintiff's delay to be undue or unreasonable. Likewise, I see nothing to suggest that Plaintiff has acted in bad faith. The bad faith inquiry centers "on whether the motion to amend itself is being made in bad faith, not whether the original complaint was filed in bad faith or whether conduct outside the motion to amend amounts to bad faith." Trueposition Inc. v. Allen Telecom, Inc., No. CIV.A.01-823(GMS), 2002 WL 1558531, at *2 (D. Del. July 16, 2002). In the case before me, Plaintiff waited only three months after discovering that Pennex was a separate entity before seeking to amend, and the amendment is a crucial one. Accordingly, there is no cause to find bad faith. With regard to prejudice to Pennex, there is no such prejudice in this case because, as noted above, Pennex was notified by the Demand Letter and the two complaints that Plaintiff was seeking to avoid the transfers from IH 2. Indeed, the Response Letter from Pennex's lawyers demonstrates that Pennex has already begun to mount its defense, as the letter asserts two affirmative defenses and provides supporting documentation. Thus, in the absence of any reason to deny Plaintiff's request to amend, I will grant him leave to amend his Amended Complaint by adding Pennex as a separate defendant.

Conclusion

For the reasons detailed above, I will grant Plaintiff's Motion to file a Second Amended Complaint. I further hold that the amendment will relate back to the date of the original Complaint, March 14, 2011.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 7
	)	
IH 1, Inc., f/k/a Indalex Holdings Finance, Inc.; IH 2, Inc. f/k/a Indalex, Inc.; IH 3, Inc. f/k/a Indalex Holding Corp.; IH 4, Inc. f/k/a Caradon Lebanon, Inc.; and IH 5, Inc. f/k/a Dolton Aluminum Company, Inc.,	)	Case No. 09-10982(PJW) (Jointly Administered)
Debtors.	)	
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George L. Miller, in his capacity as Chapter 7 Trustee of the bankruptcy estates of IH 1, IH 2, Inc., IH 3, Inc., IH 4, Inc. and/or IH 5, Inc.,	)	Adv. Proc. No. 11-51329(PJW)
Plaintiff,	)	
v.	)	
Metal Exchange Corporation,	)	
Defendant.	)	

ORDER

For the reasons set forth in the Court's memorandum opinion of this date, the motion of George L. Miller for leave to file amended complaint and for finding that filing of amended complaint relates back to filing of original complaint (Doc. # 9) is **granted.**

Peter J. Walsh
United States Bankruptcy Judge

Dated: December 30, 2011