

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	

**DECLARATION OF MATTHEW S. WILD
IN SUPPORT OF THE JOINT MOTION FOR FINAL APPROVAL**

Matthew S. Wild hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the bars of the State of New York and District of Columbia. I am also admitted to practice before the United States District Courts for the Southern, Eastern and Western District of New York, Eastern District of Michigan, Northern District of Illinois and United States Courts of Appeals for the Sixth and District of Columbia Circuits. I am a member of the Wild Law Group PLLC (“WLG”), attorneys for the Indirect Purchaser Class Action Plaintiffs.

2. I respectfully submit this declaration in support of the *Joint Motion, Pursuant to Sections 105(a), 363, 1501, 1507, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy*

¹ The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors’ executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

Rules 2002, 6004, 7023, and 9019, for Order Approving Agreement Settling Claims of Indirect Purchasers (the “Joint Motion”). As demonstrated in the Joint Motion and below, the settlement is fair, reasonable and adequate to the Settlement Class. When measured by the fact that the indirect purchasers’ recovery would be limited to 16 states, the amount of the settlement compares favorably with the settlement made by the direct purchasers whose claim encompassed the entire country. The indirect purchasers’ settlement of \$3,950,000 covers 16 states and represents an average settlement value of \$246,875 per state. By comparison, the direct purchasers’ settlement of \$12,500,000 covers all 50 states and represents an average settlement value of \$250,000 per state. Class Counsel respectfully submits that this is a great result for the Settlement Class because (unlike the indirect purchasers) the direct purchasers do not have to prove how much of the overcharge was passed on to their class members.

Class Counsel’s Experience

3. I was graduated from New York University School Law in 1994, and was admitted to practice law in New York in 1995. I spent approximately the first twelve years of my career at large law firms in New York City and Washington, D.C. Most of my practice has been devoted to antitrust law. Of particular relevance, I defended companies accused of antitrust violations from class action lawsuits like the case brought against certain of the Arctic Glacier entities and other defendants.

4. I have written three published antitrust articles. I am also the author and publisher of www.antitrustcommentary.com, a widely read blog. Judge Borman recognized my qualifications when he appointed me interim co-lead counsel in the case captioned, *In re Packaged Antitrust Ice Litig.*, 08-MD-01952, 2009 Westlaw 1518428 at *3 (E.D. Mich. June 1, 2009).

5. Max Wild was graduated from New York University School of Law in 1962. He was a law clerk to the United States Court of Appeals for the Second Circuit, a Trial Attorney for the Civil Division of the U.S. Department of Justice and an Assistant United States Attorney for the U.S. Attorney for the Southern District of New York. In private practice, he was a litigation partner of a highly regarded New York law firm where he litigated antitrust cases and other complex financial cases, generally requiring investigations in addition to formal discovery. Judge Borman likewise recognized his qualifications by appointing him interim co-lead counsel in the case captioned, *In re Packaged Ice Antitrust Litig.*, 2009 Westlaw 1518428 at *3.

Class Counsel's Investigation Was More Than Sufficient To Inform Them of the Risks of Continued Litigation

6. WLG devoted thousands of hours to the cause and conducted a thorough investigation of plaintiffs' claims, even though it was not permitted to conduct formal discovery. WLG's investigation included, among other things: interviewing one whistleblower and the lawyer for the other whistleblower; interviewing executives from a national supermarket chain to understand how antitrust overcharges are passed on, and how customers who purchased ice can be identified and tracked; interviewing an executive from an ice company and one of the owners of a defunct ice company to understand the economics of, and competition in, the ice industry; analyzing the deposition transcript of and exhibits to the deposition of Keith Corbin (one of the three former Arctic Glacier executives who pleaded guilty); working with economists from a leading consulting firm; and analyzing tape recordings (and transcripts) of conversations between Home City executives and executives of Arctic Glacier and Reddy Ice.

7. Based on this investigation, our consultations with experts and our knowledge of the applicable law, Class Counsel respectfully submits that we were more than adequately informed of the attendant risks of establishing liability and damages and maintaining class

certification through trial before negotiating the settlement.

The Risks of Continued Litigation

8. Although we remain confident that plaintiffs would ultimately prevail, plaintiffs faced the risks that they would be unable to prove damages or liability.

9. The absence of criminal convictions to a **nationwide** cartel increased the risk of establishing liability because plaintiffs had to prove that the conspiracy encompassed the relevant 16 states. The criminal convictions obtained by the U.S. Department of Justice were for market and customer allocations limited to Southeast Michigan and the Detroit metropolitan area. In addition, the attorneys general of several states conducted civil investigations and chose not to pursue those claims. The only exception was the Michigan Attorney General with whom Arctic Glacier and Home City reached settlements before a civil suit was brought.

10. Although we remain confident plaintiffs could do so, proving damages is difficult in antitrust cases, particularly so in indirect purchaser cases, because plaintiffs must prove how much less defendants would have charged the retailers (*i.e.*, the overcharge) in the absence of the conspiracy **and** how much of the overcharge the retailers passed on to consumers. The class of consumers bought from national and regional chains as well as mom-and-pop retailers in 16 states. The class would have been required to prove the overcharge suffered by each of these geographically dispersed retailers **and** the degree of pass on from each of these retailers to their customers (the class members).

The Settlement Negotiations Were Arm's Length

11. Settlements negotiations were conducted by me or under my supervision. They began in earnest in early 2013 before a mediator, who is nationally recognized in Canada. They culminated in a settlement in principle being reached in the summer of 2013. The terms of the

settlement were reached after numerous arms'-length negotiations between Class Counsel, the Monitor, and the Debtors. To the best of my knowledge, the subject of the provision that provides that the Monitor and Debtors will not object to an application for attorneys' fees of one-third of the settlement fund was not discussed until the settlement amount of \$3,950,000 was agreed.

The Settlement Is An Excellent Result For The Class

12. As noted above, Class Counsel respectfully submits that the settlement is an excellent result for the class. The settlement resolves the indirect purchasers' claim at an amount that compares favorably with the direct purchaser class' average state recovery. The indirect purchaser settlement of \$3,950,000 covers 16 states and represents an average settlement value of \$246,875 per state. By comparison, the direct purchasers' settlement of \$12,500,000 covers all 50 states and represents an average settlement value of \$250,000 per state. Class Counsel respectfully submits that this result is excellent because the direct purchasers face fewer hurdles in proving impact and damages, as they do not have to prove how much of the overcharge was passed on to their class members.

I declare subject to the penalties of perjury that the foregoing is true and correct.



Matthew S. Wild

Executed on February 5, 2014 in Winston-Salem, North Carolina.