

**UNITED STATES BANKRUPTCY COURT
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.	:	Re: Docket Nos. 7, 45 & 46

**DEBTORS' CONSOLIDATED RESPONSE TO OBJECTION TO
VERIFIED PETITION AND MOTION FOR WITHDRAWAL OF DIP
FINANCING FILED BY PUTATIVE CLASS ACTION REPRESENTATIVES**

The above-captioned debtors (collectively, the "Debtors") respectfully submit this consolidated response (the "Response") to (a) the objection (the "Recognition Objection") [D.I. 45] of the Putative Class Action Representatives (the "Class Reps") to the Verified Petition of Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of its Affiliates, for (i) Recognition of Foreign Main Proceeding and (ii) Certain Related Relief [D.I. 7] (the "Verified Petition")² and (b) the Motion of the Class Reps for an Order Withdrawing Approval of Provisional DIP Financing [D.I. 46] (the "DIP Objection"). In support of this

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) ICESurance 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.

² Capitalized terms not otherwise defined herein will have the meanings given to them in the Verified Petition.

Response, the Debtors submit the Declaration of Paula W. Render (the "Render Dec."), attached hereto as Exhibit 1.

Preliminary Statement

Inexplicably, the Class Reps seek relief that, if granted, would irretrievably damage the Debtors' business operations and harm the Class Reps' interests as potential unsecured creditors. The lynchpin of the arguments advanced by the Class Reps is a purported right to enforce a plea agreement and criminal judgment to which they are not parties.

In point of fact, the Class Reps, as private litigants and non-parties to the criminal litigation, lack standing to enforce the plea agreement or the judgment. Even if they could, their strained interpretation of the judgment is plainly incorrect; the Debtors' agreements with respect to the DIP financing are neither a waste nor transfer of assets. To the contrary, the critical liquidity provided by the financing will preserve the value of the Debtors' assets and enable the Debtors to both continue their business operations and conduct an orderly solicitation process that will maximize recoveries to creditors.

The Class Reps' arguments are baseless and the Recognition Objection and the DIP Objection should be summarily dismissed by the Court.

Response

I. The Class Reps Lack Standing to Assert Purported Probation Violations.

1. As an initial matter, the Class Reps, as private litigants, are not the proper parties to assert purported violations of Arctic Glacier U.S.'s probation. Indeed, the Supreme Court has long held that private citizens lack standing to enforce criminal laws. See, e.g., Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973).³ Bankruptcy courts also lack jurisdiction to

³ The Debtors further incorporate the arguments against the Class Reps' standing set forth in the Monitor's and DIP lenders' responses to the Recognition Objection and DIP Objection.

determine criminal matters. See, e.g., Phil. Housing Auth. v. Rainey (In re White), No. 92-11320S, 1993 WL 224661, at *2 (Bankr. E.D. Pa. June 21, 1993) ("We . . . cannot make any determinations of criminal penalties against the Defendants under . . . any . . . law.").

2. If there were issues with Arctic Glacier U.S.'s probation or the judgment, the probation officer or the U.S. Department of Justice (the "DOJ") would be the proper party to raise purported violations. Despite having been personally notified by counsel for Arctic Glacier U.S. of the filing of both the CCAA and these Chapter 15 Cases, however, the probation officer has not filed any objection to the Chapter 15 recognition request or raised any concerns about the DIP financing. The DOJ⁴ likewise has raised no objection. Render Dec. ¶ 11-12. If the probation officer or the DOJ believed there was some issue with respect to recognition or the terms of the DIP financing, they were certainly free to raise any concerns with the Court.⁵

II. The Class Reps Had No Input Into the Plea Agreement Nor Was the Provision in the Judgment Prohibiting Waste or Transfers of Corporate Assets Included for their Benefit.

3. Arctic Glacier U.S. entered into the plea agreement before the Class Reps became involved in Arctic Glacier U.S.'s criminal case. Render Dec. ¶ 3. That agreement already contemplated that Arctic Glacier U.S. would serve a term of probation. Id. The Class Reps were not involved in the criminal proceedings until Arctic Glacier U.S.'s sentencing hearing, which occurred on February 11, 2010, almost four months after the plea agreement was signed. Indeed, the Class Reps themselves have acknowledged that they had no input into the plea agreement:

⁴ Counsel for Arctic Glacier U.S. also personally notified the DOJ about the Debtors' insolvency proceedings on February 23, 2010, Render Dec. ¶ 12.

⁵ The probation officer also confirmed that she received the notices of the insolvency proceedings that were served on all interested parties. Id. ¶ 13.

Unfortunately, we believe that we were simply never able to overcome the fact that we were not invited to the party until too late, that the government, despite having been acquainted with Mr. Wild and knowing that he represented a class of indirect purchasers, did not contact him before the plea agreement was entered.

DIP Objection, Ex. 10 at 7.

4. The "waste" provision cited by the Class Reps, that "the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets," was not included for the Class Reps' benefit or at their insistence. To the contrary, the judgment entered against Arctic Glacier U.S. is a standard form, form AO 245E, used by courts in sentencing organizational defendants. See <http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO245E.pdf>; Render Dec. ¶ 6. Form AO 245E contains "Standard Conditions of Supervision," which Arctic Glacier U.S.'s judgment incorporates, *verbatim*. Render Dec. ¶ 6. These Standard Conditions of Supervision include the provision quoted above, the same provision the Class Reps purport to apply here. The fact that the quoted language is standard in judgments against organizational defendants belies the Class Reps' claim that the language was added at their request or for their benefit.

III. The Debtors Are Not Wasting Their Assets.

5. Contrary to the allegations of the Class Reps, the Debtors commenced insolvency proceedings under the CCAA and Chapter 15 of the Bankruptcy Code in order to preserve value and maximize recoveries for all stakeholders. The DIP financing that the Class Reps seek to unwind is critical to these objectives. As noted in the First Day Declaration of Philip Reynolds, a vice president with A&M, the court appointed monitor and authorized foreign representative, [D.I. 2] (the "First Day Dec."), cash flow forecasts prepared as of the petition date demonstrated that the Debtors would run out of cash necessary to continue operations no later

than two weeks after the filing date, absent the funding to be provided under the DIP facility. First Day Dec. ¶ 47. Without the provisional DIP relief granted by the Court on February 23, 2012, the Debtors would likely have been required to cease operations by now, the effect of which would be catastrophic for the Debtors and all of their stakeholders.

6. Contrary to the Class Reps' arguments, the liens granted by the Debtors in connection with the DIP financing are simply not transfers of assets.⁶ The Debtors still own the assets, which have merely been pledged as collateral for additional secured financing that is necessary for the Debtors' survival. If the Class Reps were correct that that this language in the form judgment requires an organizational defendant to obtain consent from the probation officer any time it needs secured financing, the ability of the Debtors to effectively manage and operate their business could be severely hampered. Indeed, if the Class Reps are correct, the Debtors have likely been in violation of the judgment since its inception as the Debtors have been drawing down funds from a secured credit facility for a substantial period of time.

IV. The Class Reps Have Previously, Without Success, Used the Indemnification of Certain Officers and Directors as a Basis to Seek Unmeritorious Relief.

7. In a misguided attempt to suggest that the Debtors' actions with regard to the insolvency proceedings and the DIP financing constitute waste of corporate assets, the Class Reps complain about Arctic Glacier Canada's continued funding of defense costs of certain officers and directors. DIP Objection ¶¶ 23-28. But in the civil litigation initiated by the Class Reps, the Class Reps sought to disqualify Jones Day and Dykema Gossett based upon the same complaint about indemnification. Render Dec. ¶ 8. The court flatly rejected the Class Reps' objection, stating:

⁶ The Class Reps also improperly attempt to apply the Bankruptcy Code's expansive definition of "transfer" to the interpretation of the criminal judgment. Section 101 of the Bankruptcy Code is clear, however, that its definitions only apply to the provisions in the Bankruptcy Code.

It is clear that in this case, the Plaintiff's motion for disqualification is purely strategic This disqualification motion is legal legerdemain, and behind the smoke and mirrors the Plaintiff's true motivation is transparent.

Opinion and Order Denying Motion to Disqualify, Stanford (Dec. 13, 2010, D.I. 39). This Court should similarly recognize that the filing of the Recognition Objection and the DIP Objection was purely strategic and likewise reject the relief sought here.

V. Recognition of the Canadian Proceedings Is Critical to Maximizing the Value of the Debtors' Estates.

8. As set forth in the Verified Petition, the Debtors have concluded, in consultation with their professional advisors, that it is in the best interests of all their stakeholders to pursue a solicitation process under the supervision of the Canadian Court and with the benefit of monitoring in accordance with the CCAA. Because the Debtors maintain significant operations and assets in the United States, recognition of the Canadian Proceeding is critical for providing the legal certainty necessary to carry out a successful process. Moreover, if the Debtors are unable to obtain recognition of the Canadian Proceedings, an Event of Default will occur under the DIP facility and the Debtors will lose the financing they need to preserve their value as a going concern.

Conclusion

9. These cases were commenced for the purpose of preserving value and maximizing recoveries for stakeholders. Because recognition of the CCAA and access to the DIP facility are critical to these goals, granting the relief the Class Reps seek will benefit no stakeholder, including the Class Reps. Moreover, although the Class Reps lack standing to raise purported violations of the criminal judgment, Arctic Glacier U.S. wishes to make very clear that it fully intends to continue abiding by the terms of its probation, including providing appropriate notice to the probation officer as required by the terms of the judgment.

For the reasons set forth herein and in the Verified Petition, the Debtors respectfully request that the Court: (i) recognize the Canadian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code; (ii) give full force and effect in the United States to the Initial Order, including any extensions or amendments thereof authorized by the Canadian Court; (iii) grant the agent and lenders under the Debtors' postpetition financing facility certain protections afforded by the Bankruptcy Code; and (iv) grant such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
March 13, 2012

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ATTORNEYS FOR DEBTORS

Exhibit 1

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

DECLARATION OF PAULA W. RENDER

I, Paula W. Render, hereby declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and am competent to testify thereto.
2. I am a partner in the law firm of Jones Day and am resident in the firm's Chicago office. I have represented Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc. (collectively, "Arctic Glacier") in civil litigation in the United States since early 2008. Litigation in which I have been involved includes a putative class action filed by the indirect purchaser plaintiffs who filed pleadings in these chapter 15 proceedings. I have also consulted with my colleagues who represent Arctic Glacier International, Inc. ("AGII") in the criminal litigation described in the indirect purchasers' pleadings, in connection with my representation of Arctic Glacier in the civil proceedings.
3. AGII's guilty plea was filed in the U.S. District Court for the Southern District of Ohio on October 13, 2009. A copy of that guilty plea is attached to this Declaration as Exhibit A. AGII pled guilty to a conspiracy to allocate customers in southeastern Michigan and Detroit. See Ex. A ¶ 4. The plea contemplated that AGII would serve a term of probation. Id. ¶ 6.

4. AGII's sentencing hearing occurred on February 11, 2010, about four months after AGII entered into the plea agreement that contemplated probation, among other terms. Although the indirect purchaser plaintiffs appeared at the hearing as permitted by the Crime Victims' Rights Act, they were not parties to the proceeding, either as intervenors or otherwise.

5. Judgment was entered against AGII on March 3, 2010. See United States v. Arctic Glacier Int'l, Inc., Case No. 1:09-cr-00149-HJW, D.I. 54. A copy of the judgment is attached to this Declaration as Exhibit B. The judgment contains no order of restitution, whether in favor of the indirect plaintiffs or any other party.

6. The judgment entered against AGII is in the form provided for U.S. courts' use in sentencing organizational defendants. The form is available on the US Courts' website at <http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO245E.pdf>. That form, form AO 245E, contains "Standard Conditions of Supervision," which the AGII judgment incorporated, *verbatim*. These Standard Conditions of Supervision include the condition that "the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets." See Ex. B at 2.

7. The indirect purchasers seek damages from Arctic Glacier and other parties under the laws of a number of states in multidistrict litigation that has been consolidated in the U.S. District Court for the Eastern District of Michigan. The indirect purchasers have not only sued Arctic Glacier, they have filed a separate suit against the three former Arctic Glacier employees who also pled guilty to conspiring to allocate customers. See Stanford v. Corbin, Case No. 2:10-cv-11689 (E.D. Mich.).

8. In the civil litigation, the indirect purchasers sought to disqualify the law firms that represented Arctic Glacier and the three former employees, Jones Day and Dykema Gossett.

In support of their request, the indirect purchasers argued that the firms had conflicts of interest based on, among other things, Arctic Glacier's indemnification of the individuals. The Court rejected the indirect purchasers' objection, stating:

It is clear that in this case, the Plaintiff's motion for disqualification is purely strategic . . . This disqualification motion is legal legerdemain, and behind the smoke and mirrors the Plaintiff's true motivation is transparent.

See Exhibit C, Opinion and Order Denying Motion to Disqualify at 7 (Dec. 13, 2010, D.I. 39).

9. The United States Department of Justice ("DOJ") has been aware that Arctic Glacier has needed "financing to keep the company running," since at least February 11, 2010, when that financing was discussed during AGII's sentencing hearing. See, e.g., Feb. 11, 2010 Hr'g Tr. at 103:23-104:1; 106:14-20.¹ Kevin Culum, a DOJ attorney involved in the DOJ's investigation and prosecution of AGII, attended that hearing. See id. at 1.

10. On February 22, 2012, I sent a letter by email to Amber M. Prusa, the Probation Officer assigned to AGII. Ms. Prusa offices in the U.S. probation office for the District of Nebraska, located in Omaha, Nebraska. In the letter transmitted via that email, I informed Ms. Prusa that Arctic Glacier and affiliates had initiated proceedings in a Canadian court seeking a court supervised recapitalization under the Canadian Companies' Creditors Arrangement Act and that a related filing would be made under chapter 15 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. A copy of my February 22, 2012 email and letter to Ms. Prusa is attached to this Declaration as Exhibit E.

11. On February 23, 2012, I sent Ms. Prusa a second letter, informing her that the chapter 15 filing referenced in my February 22, 2012 letter had been made. A copy of my February 23, 2012 email and letter to Ms. Prusa is attached to this Declaration as Exhibit F.

¹ The relevant portions of this transcript are attached hereto as Exhibit D.

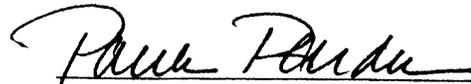
12. On February 23, 2012, my partner, John Majoras, called Kevin Culum with the DOJ, and advised him of the Arctic Glacier insolvency proceedings.

13. On March 12, 2012, I confirmed with Ms. Prusa that she had received the notices of the insolvency proceedings that were served on all interested parties.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2012.



Paula W. Render

Jones Day

77 West Wacker Drive, Suite 3500

Chicago, IL 60601

(T) 1.312.782.3939

(F) 1.312.782.8585

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	Criminal No.
)	
Plaintiff)	
)	
v.)	Filed:
)	
ARCTIC GLACIER)	
INTERNATIONAL INC.)	Violation: 15 U.S.C. § 1
)	
Defendant.)	

PLEA AGREEMENT

The United States of America and Arctic Glacier International Inc., ("defendant"), a corporation organized and existing under the laws of the state of Delaware, and with its principal place of business in St. Paul, Minnesota, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) as a corporation organized and existing under the laws of Delaware, to decline to accept service of the Summons

in this case, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Southern District of Ohio:

- (d) to plead not guilty to any criminal charge brought against it;
- (e) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;
- (f) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
- (g) to appeal its conviction if it is found guilty; and
- (h) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the applicable guidelines range in Paragraph 8

of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742. Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive Indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Southern District of Ohio. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing with one or more other packaged ice manufacturers to allocate customers in southeastern Michigan and the Detroit, Michigan metropolitan area, beginning January 1, 2001, and continuing until at least July 17, 2007, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

- (a) For purposes of this Plea Agreement, the "relevant period" is that period beginning January 1, 2001 and continuing until at least July 17, 2007. During the relevant period, the defendant was a corporation organized and existing under the laws of Delaware. During the relevant period, the defendant acquired various packaged ice manufacturers, doing business in Michigan. During the relevant period, the defendant, through its parent and subsidiary corporations (collectively, "Arctic Glacier"), was a producer of packaged ice in multiple states and was engaged in the sale of packaged ice. Packaged ice is marketed for human consumption and is sold in blocks and various bag sizes. During the relevant period, the defendant's Michigan subsidiaries employed more than 200 full time equivalent employees, but less than 1000. During the relevant period, Arctic Glacier sales of packaged ice affected by the conspiracy totaled \$50.7 million.

- (b) During the relevant period, the defendant, through certain of its executives and employees of its subsidiary corporations and its predecessor company acquired in December 2004, participated in a conspiracy to allocate customers of packaged ice sold in southeastern Michigan and the Detroit, Michigan metropolitan area. In furtherance of the conspiratorial activity, the defendant, through certain of its executives and employees of its subsidiary corporations and predecessor company acquired in December 2004, engaged in discussions and attended meetings with representatives of one or more other packaged ice producers. During these discussions and meetings, agreements were reached to allocate customers of packaged ice in southeastern Michigan and the Detroit, Michigan metropolitan area.
- (c) During the relevant period, packaged ice was sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of packaged ice, as well as payments for packaged ice, traveled in interstate commerce. The business activities of Arctic Glacier and its co-conspirator in connection with the production and sale of packaged ice affected by

this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

- (d) Acts in furtherance of this conspiracy were carried out within the Southern District of Ohio, Western Division. At least one of the conspiratorial meetings or discussions described above took place in Cincinnati, Ohio, which is located within the Southern District of Ohio.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$100 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;

- (b) pursuant to §8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") or 18 U.S.C. §§ 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and
- (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining

the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay the United States a criminal fine of \$9 million payable in installments as set forth below with interest accruing under 18 U.S.C. § 3612(f)(1)-(2).

- (a) The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed;
- (b) the United States and defendant agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), that the fine be paid in the following installments: within thirty (30) days of imposition of sentence – \$1 million (plus any accrued interest); at the one-year anniversary of imposition of sentence (“anniversary”) – \$1 million (plus any accrued interest); at the two-year anniversary – \$1.5 million (plus any accrued interest); at the three-year anniversary – \$1.5 million (plus any accrued interest); at

the four-year anniversary – \$1.5 million (plus any accrued interest); and at the five-year anniversary \$2.5 million (plus any accrued interest); provided, however, that the defendant shall have the option at any time before the five-year anniversary of prepaying any part of the remaining balance (plus any accrued interest) then owing on the fine.

9. The parties agree that they are not aware at this time of any aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

10. The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the recommended sentence set out in Paragraph 8 above. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 14 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. §8C4.1, for a downward departure from the Guidelines fine range and will request that the Court impose the recommended sentence set out in Paragraph 8 of this Plea

Agreement because of the defendant's substantial assistance in the government's investigation and prosecution of violations of federal criminal law in the packaged ice industry.

11. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 14 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence.

- (a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be rendered void.
- (b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the

guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 16 of this Plea Agreement shall be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

13. In light of the availability of civil causes of action available pursuant to 15 U.S.C. § 15, the United States agrees that it will not seek a restitution order for the offense charged in the Information.

DEFENDANT'S COOPERATION

14. Arctic Glacier will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the sale of packaged ice in the United States, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of Arctic Glacier shall include, but not be limited to:

- (a) producing to the United States all non-privileged documents, information, and other materials wherever located, in the possession, custody, or control of Arctic Glacier, requested by the United States in connection with any Federal Proceeding;
- (b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 15 of this Plea Agreement, of its current and former directors, officers, and employees of Arctic Glacier as may be requested by the United States, but excluding Keith E. Corbin, Gary D. Cooley, and Frank G. Larson, including making these persons available in the United States and

at other mutually agreed-upon locations, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

15. The ongoing, full, and truthful cooperation of each person described in Paragraph 14(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

- (a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, requested by attorneys and agents of the United States;
- (b) making himself or herself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;
- (c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);
- (d) otherwise voluntarily providing the United States with any non-privileged material or information not

- requested in (a) - (c) of this paragraph that he or she may have that is related to any Federal Proceeding;
- (e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and
- (f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 17(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 15(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement

GOVERNMENT'S AGREEMENT

16. Upon acceptance of the guilty plea called for by this Plea Agreement, and subject to the cooperation requirements of Paragraph 14 of

this Plea Agreement, the United States agrees that it will not bring further criminal charges against Arctic Glacier for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an attempted or completed antitrust conspiracy involving the sale of packaged ice in the United States or undertaken in connection with any investigation of such a conspiracy. The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

17. The United States agrees to the following:

- (a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of its sentence and subject to the exceptions noted in Paragraph 15(c), the United States will not bring criminal charges against any current or former director, officer, or employee of Arctic Glacier for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of Arctic Glacier that was undertaken in furtherance of an antitrust conspiracy involving the sale of packaged ice in the United States or undertaken in connection with any investigation of such a conspiracy ("Relevant Offense"), except that the

protections in this paragraph shall not apply to Keith E. Corbin, Gary D. Cooley, and Frank G. Larson;

- (b) Should the United States determine that any current or former director, officer, or employee of Arctic Glacier may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;
- (c) If any person requested to provide cooperation under Paragraph 14(b) fails to comply with the obligations under Paragraph 15, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;
- (d) Except as provided in Paragraph 16(e), information provided by a person described in Paragraph 16(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information

directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503, *et seq.*);

- (e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with the obligations under Paragraph 15 of this Plea Agreement, the agreement in Paragraph 16(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;
- (f) The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and
- (g) Documents provided under Paragraphs 14(a) and 15(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

18. The United States agrees that when any person travels to the United States for interviews, grand jury appearances, or court appearances

pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject such person to arrest, detention, or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony or information provided or requested in any Federal Proceeding.

19. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of Arctic Glacier as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

20. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

21. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

22. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that Arctic Glacier has failed to provide full and truthful cooperation, as described in Paragraph 14 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile

transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and Arctic Glacier shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against Arctic Glacier for any offense referred to in Paragraph 14 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

23. The defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of Arctic Glacier's violation of the Plea Agreement, any document, statement, information, testimony, or evidence provided by it or any individual identified by the United States pursuant to paragraphs 14(b) or 15(b) to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, Arctic Glacier unconditionally waives its right to challenge the use of such

evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 408 and Fed. R. Evid. 410.

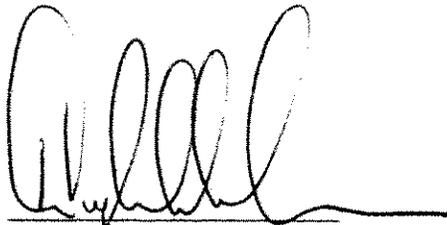
ENTIRETY OF AGREEMENT

24. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

25. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

26. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Dated: _____



BY:
HUGH A. ADAMS, ESQ.
Corporate Secretary
Arctic Glacier International Inc.

Respectfully submitted,



KEVIN C. CULUM
[3460 MT]



JOHN M. MAJORAS, ESQ.
[OH 0036780]
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Counsel for ARCTIC GLACIER
INTERNATIONAL INC.

DONALD M. LYON
[WA 19207]

MACHELLE L. JINDRA
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Antitrust Division
Carl B. Stokes U.S. Court House
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Exhibit B

FILED
JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT

10 MAR -3 PM 4: 05

SOUTHERN

District of

OHIO

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE
(For Organizational Defendants)

ARCTIC GLACIER INTERNATIONAL, INC.

CASE NUMBER: CR-1-09-149

John M. Majoras, Esq.
Defendant Organization's Attorney

THE DEFENDANT ORGANIZATION:

- pleaded guilty to count(s) One of the Information
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
15 U.S.C. 1	Conspiracy to Restrain Trade	July 17, 2007	One

The defendant organization is sentenced as provided in pages 2 through 5 of this judgment.

- The defendant organization has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

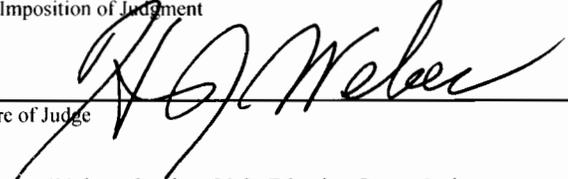
It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I.D. No.: _____

Defendant Organization's Principal Business Address:

Defendant Organization's Mailing Address:

February 11, 2010
Date of Imposition of Judgment


Signature of Judge

Herman J. Weber, Senior U.S. District Court Judge
Name and Title of Judge

3/03/10
Date

DEFENDANT ORGANIZATION: ARCTIC GLACIER INTERNATIONAL, INC.
CASE NUMBER: CR-I-09-149

PROBATION

The defendant organization is hereby sentenced to probation for a term of :

FIVE (5) YEARS

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant organization shall not commit another federal, state, or local crime;
- 2) The defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) The defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) The defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) The defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successor or assignees; and
- 6) The defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

DEFENDANT
CASE

ARCTIC GLACIER INTERNATIONAL, INC.
CR-1-09-149

ADDITIONAL PROBATION TERMS

- 1) The defendant shall continue to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.
- 2) Within 30 days, the defendant shall notify the probation officer upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.
- 3) The defendant shall make periodic payments, as established by the plea agreement as follows:
Within thirty (30) days of imposition of sentence – \$1 million (plus any accrued interest); at the one-year anniversary of imposition of sentence (“anniversary”) – \$1 million (plus any accrued interest); at the two-year anniversary – \$1.5 million (plus any accrued interest); at the three-year anniversary – \$1.5 million (plus any accrued interest); at the four-year anniversary – \$1.5 million (plus any accrued interest); and at the five-year anniversary \$2.5 million (plus any accrued interest); provided, however, that the defendant shall have the option at any time before the five-year anniversary of prepaying any part of the remaining balance (plus any accrued interest) then owing on the fine.
- 4) The defendant has represented to the Court it has in effect a compliance and ethics program consistent with § 8B2.1 (Effective Compliance and Ethics Program). The defendant shall comply with its plan and make periodic reports to the probation officer as directed by the probation officer regarding the organization's progress in its efforts to remedy the harm caused by the offense and to eliminate or reduce the risk that the instant offense will cause future harm.
- 5) The defendant shall continue to notify its employees and shareholders of its criminal behavior and its program.
- 6) Within 30 days, the defendant shall report to the Probation Officer any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the organization learns.
- 7) The defendant shall continue to cooperate with the government as it has agreed in the Plea Agreement.
- 8) The defendant shall appoint a corporate representative in Minnesota to report to the Probation Office on behalf of the corporation and be the primary contact with the probation officer.

DEFENDANT ORGANIZATION: ARCTIC GLACIER INTERNATIONAL, INC.
CASE NUMBER: CR-1-09-149

SCHEDULE OF PAYMENTS

Having assessed the organization’s ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 400.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C or D below; or
- B Payment to begin immediately (may be combined with C or D below); or
- C Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Special instructions regarding the payment of criminal monetary penalties:
 Within thirty (30) days of imposition of sentence – \$1 million (plus any accrued interest); at the one-year anniversary of imposition of sentence (“anniversary”) – \$1 million (plus any accrued interest); at the two-year anniversary – \$1.5 million (plus any accrued interest); at the three-year anniversary – \$1.5 million (plus any accrued interest); at the four-year anniversary – \$1.5 million (plus any accrued interest); and at the five-year anniversary \$2.5 million (plus any accrued interest); defendant shall have the option at any time before the five-year anniversary of prepaying any part of the remaining balance.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant organization shall pay the cost of prosecution.
- The defendant organization shall pay the following court cost(s):
- The defendant organization shall forfeit the defendant organization’s interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: PACKAGED ICE ANTITRUST
LITIGATION, ET AL.,

No. 08-01952

Plaintiffs,

District Judge Paul D. Borman

v.

Magistrate Judge R. Steven Whalen

ARCTIC GLACIER, INC., ET AL.,

Defendants.

WAYNE STANFORD,

No. 10-11689

Plaintiff,

District Judge Paul D. Borman

v.

Magistrate Judge R. Steven Whalen

KEITH E. CORBIN ET AL.,

Plaintiffs.

OPINION AND ORDER DENYING MOTION TO DISQUALIFY

Before the Court is Plaintiff Wayne Stanford's and Indirect Purchaser Plaintiffs' motion to disqualify the law firms of Jones Day and Dykema Gossett from representing Defendants [Doc. #264 in case 08-01952, and Doc. #16 in case 10-11689]. For the following reasons, the motion is DENIED.

I. BACKGROUND

Following a Department of Justice investigation into alleged anticompetitive practices in the packaged ice industry, 37 civil complaints were filed in a number of federal districts. On June 5, 2008, these cases were consolidated and transferred to this district by the Panel on Multidistrict Litigation ("MDL"). They are pending under case no. 08-md-01952. The Defendants include both the corporate entities (Arctic Glacier,

Inc., et al.) and individual Defendants. Among the individual Defendants is Wayne Stanford. Jones Day and Dykema represent corporate Defendants Arctic Glacier, Inc., Arctic Glacier Income Fund, and Arctic Glacier International, Inc.

In a separate criminal case, Arctic Glacier International, Inc. and three former employees of Arctic Glacier, Inc., Keith Corbin, Frank Larson and Gary Cooley, pled guilty to conspiracy to allocate customers. The individual defendants had separate counsel in the criminal case.¹

On April 26, 2010, almost two years after the above MDL cases were transferred to this district, Wayne Stanford, an “indirect purchaser plaintiff” in the MDL case, filed a separate case against the three individuals who pled guilty in the criminal case, Keith Corbin, Frank Larson and Gary Cooley. *Stanford v. Corbin, et al.*, case no. 10-11689. Jones Day and Dykema represent all three individuals in that case.

Matthew Wild, of Wild Law Group PLLC, represents Plaintiff Wayne Stanford in both cases, and the indirect purchasers in the MDL case.

Attached as Exhibit 1 to Defendants’ brief in opposition to the motion to disqualify [Doc. #276] is the declaration of attorney Paula Render, a partner with Jones Day, and counsel for Defendants Corbin, Larson, Cooley and Arctic Glacier. Ms. Render states that before undertaking representation of the individuals in the *Stanford* case, she conducted an analysis of the facts and issues in that case and the MDL case, and concluded that “the interests of all defendants were fully aligned and that no actual conflict of interest existed as a result of Jones Day’s concurrent representation of the Individuals and Arctic Glacier.” *Declaration of Paula Render*, ¶ 5. Ms. Render details extensive communications with the individual Defendants, and with Max Wild and Matthew Wild,

¹ Jones Day represented Arctic Glacier in the criminal case.

Plaintiff Stanford's attorneys, regarding concurrent representation issues. On May 13, 2010, Max Wild emailed a letter to Ms. Render, stating that because he intended to offer "immunity" to the individual Defendants in exchange for their testimony against Arctic Glacier in the MDL case, Jones Day was precluded from continued representation of any Defendants in the MDL case or the *Stanford* case. *Defendant's Exhibit A*. Mr. Wild stated, in pertinent part:

"In addition, there will be actual conflicts in the immediate future. Plaintiffs intend to offer one or more of the individual defendants an opportunity to be relieved of the burdens of defending this case or being at risk for a substantial judgment. As the government routinely offers immunity to persons in a criminal investigation for their truthful testimony, plaintiff plans to do so with one or more of the individual defendants. This will require a negotiation with the individual defendants, including their proffer of the facts and supporting documents....As there is a likelihood that one or more of the individuals will be cooperating with plaintiffs against the remaining defendants, Jones Day may be precluded from representing any defendant in this case or in *In re Packaged Ice Antitrust Litig.*"

Plaintiff's conflict of interest claim would also apply to Dykema Gossett PLLC, whose attorneys also represent the individuals in the *Stanford* case and Arctic Glacier entities in the MDL case.

In the present motion Plaintiff Stanford, through attorneys Max Wild and Matthew Wild, argue that there is a "nonconsentable conflict" because of their "immunity" offer, and because Arctic Glacier will indemnify the individual Defendants for their litigation expenses.

II. DISCUSSION

Michigan Rule of Professional Conduct 1.7 states as follows regarding conflicts of interest:

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The right to counsel of one's choice, while perhaps not sacrosanct, is not to be dispensed with lightly. “[A] party's right to have counsel of choice is a fundamental tenet of American jurisprudence, and therefore a court may not lightly deprive a party of its chosen counsel.” *American Special Risk Ins. Co. ex rel. South Macomb Disposal Authority v. City of Centerline*, 69 F.Supp.2d 944, 953 (E.D.Mich.,1999), quoting *Capacchione v. Charlotte-Mecklenburg Bd. of Educ.*, 9 F.Supp.2d 572, 579 (W.D.N.C.1998). *See also Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715 (7th Cir.1982) (disqualification of counsel “is a drastic measure which courts should hesitate to impose except when absolutely necessary”); *DeBiasi v. Charter County of Wayne*, 284 F.Supp.2d 760, 770 -771 (E.D.Mich. 2003) (characterizing disqualification as “an extreme sanction,” and reflecting that “[d]isqualification of a lawyer in a case is a serious matter, and one which is not undertaken lightly”).

“A party seeking the disqualification of counsel ‘bears the burden of demonstrating specifically how and as to what issues in the case the likelihood of prejudice will result.’” *Employers Mut. Cas. Co. v. Al-Mashhadi*, 2009 WL 2711963, *10 (E.D.Mich. 2009), quoting *Rymal v. Baergen*, 262 Mich.App. 274, 319, 686 N.W.2d 241 (2004). In addition, it must be shown that “some specifically identifiable impropriety actually occurred.” *Id.*

In this case, Plaintiff Stanford falls well short of meeting the demanding standard for disqualification.

Plaintiff's argument that his offer of "immunity" places defense counsel in an irreconcilable conflict of interest is without merit, and his analogy to criminal immunity agreements is completely off the mark. In a criminal case, unlike the present case, the defendant enjoys a Fifth Amendment right not to testify at all. In the typical agreement, the defendant receives immunity from prosecution (or more commonly, a favorable sentence agreement) in exchange for waiving his Fifth Amendment right and cooperating with the prosecution against other defendants. The cooperation generally includes a debriefing and an agreement to provide truthful testimony against the codefendants. Because the Defendants in this civil case have no Fifth Amendment right to waive,² the Plaintiff's offer of "immunity" is illusory. If the Plaintiff wishes to undertake a "debriefing" and obtain truthful testimony from the Defendants, he can both depose them and examine them at trial, where they will be placed under oath and sworn to tell the truth.

The Plaintiff has therefore not shown that any "specifically identifiable impropriety *actually occurred*," *Employers Mutual, supra* at *10 (emphasis added), and indeed, has not even shown a reasonable possibility of a conflict. In addition, as shown by attorney Render's declaration, all three individual Defendants were fully apprised of the joint representation, and consented after consultation with separate counsel.

Plaintiff also argues that defense counsel has a "nonconsentable conflict" because Arctic Glacier, Inc. has agreed to pay the legal fees of the individual Defendants. However, the Michigan Rules of Professional Conduct clearly provide that "[a] lawyer

² In any event, the three individual Defendants have already pled guilty in their criminal cases.

may be paid from a source other than the client if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client." Comment to MRPC 1.7. In addition, "under the...Michigan rules, almost all conflicts are consentable." *CenTra, Inc. v. Estrin*, 639 F.Supp.2d 790, 809, n.8 (E.D. Mich. 2009). Again, the individual Defendants consented to joint representation after full disclosure and consultation with separate counsel.

Nor do Plaintiff's arguments under Delaware law hold water. Arctic Glacier, Inc. is a Canadian company, not a Delaware company. Moreover, Plaintiff's argument is premised on the theory that Delaware law does not permit indemnification where the individual Defendants have pled guilty to the same conduct alleged in his complaint. That argument is without merit. According to attorney Render's declaration, Arctic Glacier, Inc.'s bylaws provide that the company "shall indemnify a ...former director or officer of the Corporation...if (a) he acted honestly and in good faith with a view to the best interests of the Corporation; and (b) in case of a criminal...proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing his conduct was lawful." *Render Declaration*, ¶ 19. Then, Del. Code. Ann. titl. 8, ¶ 145(b) provides that "[t]he termination of any action...by...conviction, or upon a plea of nolo contendere or its equivalent, *shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation.*" (Emphasis added). Contrary to Plaintiff's argument, even if Delaware law applied, it does not create a presumption of bad faith that would bar indemnification or render joint representation "nonconsentable."

Finally, indemnification of the individuals by Arctic Glacier, Inc. does not violate that company's probation, because that company is not on probation. Rather, the company that pled guilty was Arctic Glacier International, Inc., a U.S. subsidiary.

The Commentary to M.R.P.C. 1.7 notes that disqualification motions are disfavored because they may be “misused as a technique of harassment” rather than to vindicate a legitimate ethical concern. It is clear that in this case, the Plaintiff’s motion for disqualification is purely strategic. Plaintiff’s counsel is also counsel for the indirect purchasers in the MDL case. He filed his complaint against the three individual Defendants almost two years after the MDL was certified. The disqualification motion was filed a mere three weeks after the Defendants answered the *Stanford* complaint, premised on a completely off-point analogy to a criminal immunity agreement. This disqualification motion is legal legerdemain, and behind the smoke and mirrors the Plaintiff’s true motivation is transparent.

The Defendants have knowingly and voluntarily consented to joint representation, and in the absence of an actual conflict, or any semblance of good cause for disqualification, they are entitled to representation by the attorneys of their choice.

Accordingly, Plaintiffs’ motion to disqualify Jones Day and Dykema Gossett [[Doc. #264 in case 08-01952, and Doc. #16 in case 10-11689] is DENIED.

SO ORDERED.

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Date: December 13, 2010

CERTIFICATE OF SERVICE

I hereby certify on December 13, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on December 13, 2010: **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge R. Steven Whalen
(313) 234-5217

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA,	.	Case Number 1:09-cr-149
	.	
Plaintiff,	.	Cincinnati, Ohio
	.	
- v -	.	Thursday, February 11, 2010
	.	10:00 a.m. Hearing
	.	
ARCTIC GLACIER	.	
INTERNATIONAL, INC.	.	
	.	Sentencing Hearing
Defendant.	.	
.....	.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

APPEARANCES:

For the Plaintiff:	UNITED STATES DEPARTMENT OF JUSTICE
	BY: Kevin C. Culum, Esq.
	and Donald M. Lyon, Esq.
	Antitrust Division
	Carl B. Stokes United States Court House
	14th Floor
	801 W. Superior Avenue
	Cleveland, Ohio 44113-1857

For the Defendant Arctic Glacier International, Inc:

John M. Majoras, Esq.
Jones Day
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215-2673

For the Petitioners:	David F. Axelrod, Esq.
	Axelrod LLC
	250 Civic Center Drive
	Suite 500
	Columbus, Ohio 43215

For the Victims Group - Martin McNulty and Gary Mowery:
Daniel Low, Esq.
Kotchen & Low LLP
2300 M. Street NW, Suite 800
Washington, D.C. 20037

Matthew S. Wild, Esq.
Levitt & Kaizer
148 E. 78th Street
New York, New York 10075

Also Present:

Hugh A. Adams (Deft's Corporate Rep.)

Gary Mowery

Laura Jensen (U.S. Probation Department)

S/A James Brennan (FBI)

Don Brown (Economist)

James R. Nelson, Esq. (Counsel for Reddy Ice)

James (Jay) Stautberg (Home City Ice Corporate Rep.)

Michael A. Roberts, Esq.

Ralph W. Kohnen, Esq. (Afternoon Session)

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Clerk: Darlene Maury

Court Reporter: Mary Ann Ranz
810 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202

- - -

1 facilities in Canada, but the bulk of their sales are in the
2 United States.

3 For them to try to shelter their assets into the -- into
4 Canada is absurd. They have hard assets in the United States.
5 If a civil judgment is obtained, if worse comes to worst, they
6 could attach the plants, the assets here in the United States.

7 I'm not -- I'm not a civil remedy person, but it just
8 seems absurd to me this idea that a company that is doing
9 business in the United States, obtains the vast majority of
10 their revenue from the United States, would not -- would be
11 able to shift their revenue to Canada and make it unobtainable
12 to a civil judgment obtained in the United States.

13 And I defer, because I'm not a civil lawyer. I'm a
14 criminal lawyer. I tried to find fire where there was smoke.
15 But my sense of what would occur is that I don't think that is
16 an issue, but I defer to Mr. Majoras and to your experience as
17 a judge, because I'm not -- I'm not a civil lawyer.

18 THE COURT: But as I understand it, that the money
19 that Mr. Axelrod referred to was the quote -- and I'll use an
20 inappropriate term -- the "dividends" they paid. They cut off
21 the dividends to these holders of these instruments. Is that
22 correct? In other words, like Fifth Third did, for example.

23 MR. MAJORAS: I'll comment specifically about Arctic,
24 Your Honor. But, yes, the payments were made to the unit
25 holders on an annual basis and those were suspended as a

1 requirement to obtain a financing to keep the company running.

2 THE COURT: And then that is, from my inexperience,
3 like a dividend?

4 MR. MAJORAS: Yes, sir.

5 MR. CULUM: Any further questions of me, Your Honor,
6 in terms of establishing why this Plea Agreement should be
7 accepted?

8 THE COURT: As I understand it, the issue raised by
9 the alleged victims before this Court deal with their rights
10 under the Victims' Act. The Victims' Act specifically says
11 that you retain the right of your prosecutorial discretion.
12 I'll cite the number later on.

13 MR. CULUM: Thank you, Your Honor.

14 THE COURT: But that's what we're talking about here.
15 And, Mr. Axelrod, I'll give you your shot later.

16 MR. AXELROD: Thank you, Your Honor.

17 THE COURT: I saw you out of the corner of my eye.
18 I'm watching you.

19 But we get to the question that I've asked you in the
20 other sentencings: The best-effort requirement.

21 MR. CULUM: Thank you, Your Honor.

22 In terms of the notice to the victims pursuant to 18
23 U.S.C. 3771, it enumerates a number of rights entitled to
24 crime victims.

25 18 U.S.C. 3771(d)(2) recognizes the difficulties

1 associated with cases in which multiple victims, as in this
2 case where we may have thousands of victims, to accord the
3 rights discussed in 18 U.S.C. 37'(d) -- or 37'(a), excuse me,
4 to all victims -- in other words, sometimes it's hard to
5 provide notice of public proceedings which is an enumerated
6 right within 3771 to all the victims. So, in this case it
7 allows you, the district court judge, to fashion a reasonable
8 procedure to accord such rights.

9 Here, the Antitrust Division asks you to establish such a
10 reasonable procedure and we did so. And we agreed that -- we
11 fashioned a reasonable procedure. And that procedure -- first
12 and foremost, the Antitrust Division was going to provide
13 notice to crime victims via our Web site, and, secondarily, to
14 provide notice of the notice through the Detroit papers. That
15 notice was run December 20th, 2009, in the Sunday -- in a
16 widely circulated paper in the Detroit -- in *The Detroit Free*
17 *Press*.

18 The United States believes that this procedure has
19 satisfied the dictates of 18 U.S.C., Section 37'(d)(2) without
20 unduly complicating or prolonging these proceedings.

21 And for the record, we note the various victims who have
22 appeared here today as an indication that the victims have
23 been notified of all public proceedings. And again as I
24 mentioned earlier, we did notify Class Counsel for the victims
25 of this proceeding and they have chosen not to be here.

1 THE COURT: Now, does the assets that are listed in
2 the Presentence Report, are they the assessments of the Arctic
3 Glacier International, the mother company?

4 MR. MAJORAS: Yes, sir. They're a consolidated
5 statement.

6 THE COURT: It's a consolidated statement.

7 So, this is an accurate statement that I can rely on as
8 the total liabilities and equity of the mother -- of the
9 entire company.

10 MR. MAJORAS: Yes, sir.

11 There is one additional point that I'd like to raise
12 related to the issues that you're talking about and it is
13 something that is occurring, I believe, as we sit here.

14 As we had indicated to the Court in our prior hearings,
15 the company had been seeking refinancing of debt obligations
16 that were coming due on January 1. The company was able to
17 extend that period, the due date of those obligations, to
18 March 1 of this year.

19 Just yesterday -- within the last day or two, a deal for
20 refinancing did close for those debt obligations.

21 I'm just reminded this is not public information, Your
22 Honor. That is why I'm hesitating.

23 THE COURT: Well, don't go into it.

24 MR. MAJORAS: Thank you.

25 THE COURT: I appreciate that you're leveling with

Exhibit E

Subject: Letter re Arctic Glacier International, Inc . _

From: Paula Render
Extension: 5-1555

02/22/2012 04:16 PM

To: Amber_Prusa
Cc: depotter, John M. Majoras, Eric P. Enson

Ms. Prusa:

Attached is a letter concerning Arctic Glacier International, Inc. Thank you.

Paula W. Render
Jones Day
77 West Wacker Drive
Chicago, IL 60601
(312) 269-1555
prender@jonesday.com



Render letter to Amber Prusa.pdf

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JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601.1692
TELEPHONE: 312.782.3939 • FACSIMILE: 312.782.8585

Direct Number: (312) 269-1555
prender@JonesDay.com

February 22, 2011

VIA U.S. MAIL AND E-MAIL

Amber M. Prusa
U.S. Probation Office, District of Nebraska
111 South 18th Plaza, Suite C79
Omaha, NE 68102-1312

Re: Arctic Glacier International Inc.

Dear Ms. Prusa:

I am writing on behalf of Arctic Glacier International Inc. ("Arctic Glacier"), and pursuant to Arctic Glacier's obligations under the March 3, 2010 Judgment. My colleague, Eric Enson, usually communicates with you regarding Arctic Glacier, but he is currently in trial and so I am stepping in for him.

As I believe you probably know, Arctic Glacier has been struggling with financial difficulties for some time. Today, it has initiated proceedings in a Canadian court seeking a court supervised recapitalization under the Canadian Companies' Creditors Arrangement Act ("CCAA").

The press release announcing this news is attached. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Paula W. Render

Encl.

cc: David Potter
John M. Majoras

CHI-1836720v1

ARCTIC GLACIER INCOME FUND

Arctic Glacier Pursues Recapitalization Via CCAA Filing

Ice maker to maintain business as usual pending recapitalization

Winnipeg – February 22, 2012 – Arctic Glacier Income Fund (CNSX:AG.UN) today announced that its Trustees have authorized the Fund, together with its subsidiaries (“Arctic Glacier”), to initiate proceedings in the Manitoba Court of Queens Bench seeking a court supervised recapitalization under the *Companies’ Creditors Arrangement Act* (“CCAA”).

In the CCAA application, Arctic Glacier seeks approval for a court supervised recapitalization process and for the immediate initiation of a sale and investment solicitation process (“solicitation process”). The CCAA application also seeks a stay of certain creditor claims and approval of debtor-in-possession financing that would enable Arctic Glacier to maintain normal business operations as the solicitation process is implemented. Court proceedings are to take place today in Winnipeg.

“We believe that a court supervised recapitalization of Arctic Glacier’s business is the best method available to secure its future,” said Keith McMahon, President and CEO of Arctic Glacier. “The CCAA process would allow the time and stability required to implement the solicitation process, while continuing our normal day-to-day operations. We expect that it would result in a sale or recapitalization of the business, which will maximize value for the benefit of all of our stakeholders.”

The solicitation process has the support both of Arctic Glacier’s secured lenders and two of its unitholders, Coliseum Capital Management, LLC and Talamod Asset Management, LLC (together, the “Concerned Unitholders”). Both the lenders and the Concerned Unitholders believe the implementation of the solicitation process is in the best interest of all stakeholders of Arctic Glacier.

“Over the last several months, the company has received proposals from a number of parties that indicated value for all company stakeholders, including unitholders,” said Gary Filmon, Chairman of the special committee of the board of trustees. “We believe a court supervised solicitation process would maximize value by allowing all interested parties to fully evaluate the opportunity presented by Arctic Glacier while setting a reliable timetable for the ultimate sale or recapitalization.”

Arctic Glacier’s secured lenders have also agreed, subject to court approval, to provide up to \$50 million in a debtor-in-possession financing facility to fund Arctic Glacier’s operations during the CCAA process.

An application will also be made seeking recognition of the CCAA proceedings in the U.S. pursuant to Chapter 15 of the U.S. Bankruptcy Code.

During the CCAA process, Arctic Glacier expects to maintain all operations at their normal capacity in both Canada and the United States. No layoffs or lease terminations are planned and all suppliers of goods and services are intended to be paid as usual, including amounts owed prior to the CCAA filing.

About Arctic Glacier

Arctic Glacier Income Fund, through its operating company, Arctic Glacier Inc., is a leading producer, marketer and distributor of high-quality packaged ice in North America, primarily under the brand name of Arctic Glacier® Premium Ice. Arctic Glacier operates 39 production plants and 47 distribution facilities across Canada and the northeast, central and western United States servicing more than 75,000 retail locations.

Arctic Glacier Income Fund trust units are listed on the Canadian National Stock Exchange under the trading symbol AG.UN. There are 350.3 million trust units outstanding.

Forward-Looking Information

Certain matters set forth in this news release, including statements with respect to the CCAA proceedings, the solicitation process, the sale or recapitalization of Arctic Glacier, the operations of Arctic Glacier, and the ability of Arctic Glacier to meet its obligations are forward looking. These forward-looking statements reflect management's current views and are based on certain assumptions including assumptions as to future operating conditions and courses of action, sale or recapitalization alternatives, economic conditions and other factors management believes are appropriate. Such forward looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those contained in these statements, including the risk that sale or recapitalization alternatives may not be available to Arctic Glacier or may not be available on terms favourable to Arctic Glacier and its security holders or that any such sale would yield proceeds sufficient for any distribution to Arctic Glacier's unitholders, as well as those risks and uncertainties identified under the heading "Risks Management" in Arctic Glacier's management's discussion and analysis for each of the year ended December 31, 2010, and for the third quarter ended September 30, 2012 available at www.sedar.com. These forward-looking statements are made as at the date of this news release, and the Fund assumes no obligation to update or revise them, either publicly or otherwise, to reflect new events, information or circumstances.

Contact Information

Keith McMahon, President & CEO
Doug Bailey, Chief Financial Officer
Toll free investor relations phone: 1-888-573-9237

www.arcticglacier.com

Exhibit F

Subject: Re: Letter re Arctic Glacier International, Inc ._


From: Paula Render
Extension: 5-1555

02/23/2012 04:43 PM

To: Amber_Prusa
Cc: depotter, Eric P. Enson, John M. Majoras

From: Paula Render/JonesDay Ext. 5-1555
To: Amber_Prusa@nep.uscourts.gov
Cc: depotter@ArcticGlacier.com, Eric P. Enson/JonesDay@JonesDay, John M. Majoras/JonesDay@JonesDay

Ms. Prusa:

Attached is another letter concerning Arctic Glacier International Inc., following up on my letter of yesterday. Thank you.



2-23-12 Letter to Prusa.pdf

Paula W. Render
Jones Day
77 West Wacker Drive
Chicago, IL 60601
(312) 269-1555
prender@jonesday.com

Paula Render

Ms. Prusa: Attached is a letter concerning Arctic...

02/22/2012 04:16:27 PM

From: Paula Render/JonesDay
To: Amber_Prusa@nep.uscourts.gov
Cc: depotter@ArcticGlacier.com, John M. Majoras/JonesDay@JonesDay, Eric P. Enson/JonesDay@JonesDay
Date: 02/22/2012 04:16 PM
Subject: Letter re Arctic Glacier International, Inc._

Ms. Prusa:

Attached is a letter concerning Arctic Glacier International, Inc. Thank you.

Paula W. Render
Jones Day
77 West Wacker Drive
Chicago, IL 60601
(312) 269-1555
prender@jonesday.com

[attachment "Render letter to Amber Prusa.pdf" deleted by Paula Render/JonesDay]

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JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601.1692
TELEPHONE: 312.782.3939 • FACSIMILE: 312.782.8585

Direct Number: (312) 269-1555
prender@JonesDay.com

February 23, 2011

VIA U.S. MAIL AND E-MAIL

Amber M. Prusa
U.S. Probation Office, District of Nebraska
111 South 18th Plaza, Suite C79
Omaha, NE 68102-1312

Re: Arctic Glacier International Inc.

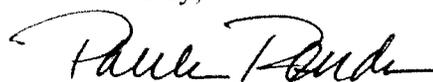
Dear Ms. Prusa:

I am following up on my letter of yesterday, on behalf of Arctic Glacier International Inc. ("Arctic Glacier"), and pursuant to Arctic Glacier's obligations under the March 3, 2010 Judgment.

Yesterday I provided you with the information that Arctic Glacier had initiated proceedings in a Canadian court seeking a court supervised recapitalization under the Canadian Companies' Creditors Arrangement Act ("CCAA"). The press release I enclosed indicated that a related filing would be made under Chapter 15 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the U.S. District of Delaware. The Chapter 15 filing was made today. A copy of that court's provisional order recognizing the Canadian filing and its effect on proceedings here in the United States is provided with this letter.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Paula W. Render

Encl.

cc: David Potter
John M. Majoras

CHI-1836889v1

**UNITED STATES BANKRUPTCY COURT
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.	:	
	:	Ref. Docket No. 4

ORDER GRANTING PROVISIONAL RELIEF

Upon the motion (the "Motion")² of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative for the above captioned debtors (collectively, the "Debtors") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Court of Queen's Bench of Winnipeg Centre, for entry of a provisional order, pursuant to sections 105(a), 362, 364, 365, 1519 and 1521 of the Bankruptcy Code: (i) recognizing and enforcing the initial order (the "Initial Order") of the Canadian Court on an interim basis in the United States, including the Canadian Court's decision (a) to authorize the Debtors to enter into and perform

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) ICESurance 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

under that certain DIP Facility,³ and (b) to grant the DIP Charge to the DIP Lenders under the DIP Facility, and; (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders, certain protections afforded by the Bankruptcy Code, including those protections provided by section 364(e) of the Bankruptcy Code; (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases (the "Chapter 15 Cases") on an interim basis, pursuant to sections 105(a), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code; (iv) applying, on an interim basis, section 108 of the Bankruptcy Code; and (v) extending, on an interim basis, pursuant to sections 1519(a)(3), 1521(a)(7) and 105(a) of the Bankruptcy Code, the application of sections 362 and 365(e) to and for the benefit of Glacier Valley Ice Company, L.P. ("Glacier L.P."), one of the Debtors' non-debtor affiliates; and the Court having reviewed the Motion, the Petition for Recognition, and the Reynolds Declaration, and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; and no other or further notice being necessary or required; and the Court having determined that the legal and factual bases set forth in the Motion, the Petition for Recognition and the Reynolds Declaration, and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact

³ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Initial Order.

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Monitor has demonstrated a substantial likelihood of success on the merits that (i) the Debtors are subject to a pending “foreign main proceeding” as that term is defined in section 1502(4) of the Bankruptcy Code, (ii) the Monitor is a “foreign representative” as that term is defined in section 101(24) of the Bankruptcy Code, and (iii) all statutory elements for recognition of the Canadian Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The Monitor has demonstrated that (i) the commencement of any proceeding or action against the Debtors and Glacier L.P. and their respective businesses and all of their assets, should be enjoined pursuant to sections 105(a), 1519 and 1521 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code to permit the fair and efficient administration of the Canadian Proceeding and to allow the Monitor to supervise an orderly marketing and sale process for the assets of the Debtors, pursuant to the sale and investment solicitation procedures approved in the Initial Order, for the benefit of all stakeholders; and (ii) the relief requested will not cause either an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

E. The Monitor has demonstrated that unless this Order is issued, there is a material risk that one or more parties in interest will take action against the Debtors, Glacier L.P.

or their assets, thereby interfering with the jurisdictional mandate of this court under chapter 15 of the Bankruptcy Code, interfering with and causing harm to the Monitor's effort to supervise a sale and maximize the value of the Debtors' assets pursuant to the terms of the SISP. As a result, the Debtors will suffer immediate and irreparable harm for which they will have no adequate remedy at law and therefore it is necessary that the Court grant the relief requested without prior notice to parties in interest or their counsel.

F. The Monitor has demonstrated that the incurrence of indebtedness authorized by the Initial Order is necessary to prevent irreparable harm to the Debtors because without such financing, the Debtors will be unable to continue operations, which will significantly impair the value of their assets.

G. The Monitor has demonstrated that the terms of the financing are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lenders, as defined in the Initial Order, and the DIP Lenders would not have extended financing without conditions precedent requiring a final recognition order by this Court and the Debtors' best efforts to obtain interim protection under section 364(e) of the Bankruptcy Code, as made applicable by sections 105(a), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, while consideration of final recognition was pending.

H. Absent the relief granted herein, the Debtors may suffer immediate and irreparable injury, loss or damage for which there is no adequate remedy at law. Further, unless this Order issues, the assets of the Debtors and Glacier L.P. located in the United States could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in the Debtors suffering immediate and irreparable injury, loss, or damage by, among other things, (i) interfering with the jurisdictional mandate of this Court under chapter 15 of the

Bankruptcy Code, and (ii) interfering with or undermining the success of the Canadian Proceeding and the Debtors' efforts to pursue a going-concern sale or refinancing of their business for the benefit of all their stakeholders.

I. The Monitor has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of the Debtors' contracts may take the position that the commencement of the Canadian Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration, if permitted and valid, could severely disrupt the Debtors' operations and marketing efforts, result in irreparable damage to the value of the Debtors' business, and cause substantial harm to the Debtors' creditors and other parties in interest.

J. The Monitor has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief.

K. The interests of the public will be served by entry of this Order.

L. The Monitor and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The Motion is granted.
2. The Initial Order is hereby enforced on an interim basis, including, without limitation, (a) authorizing the Debtors to obtain credit under the DIP Facility and grant the Lenders the DIP Charge, and (b) staying the commencement or continuation of any actions

against Glacier L.P. or its assets, and shall be given full force and effect in the United States until otherwise ordered by this Court.

3. While this Order is in effect, the Monitor and the Debtors shall be entitled to the full protections and rights under section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States. Specifically, all persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action involving the Debtors, their assets or the proceeds thereof, or their former, current or future directors and officers, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors or their assets, (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or any of their property, or (d) managing or exercising control over the Debtors' assets located within the territorial jurisdiction of the United States except as expressly authorized by the Debtors in writing.

4. Pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, (a) section 108 is hereby made applicable to the Debtors in these Chapter 15 Cases, (b) section 362 of the Bankruptcy Code is hereby made applicable in the Chapter 15 Cases to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States, and (c) section 365(e) of the Bankruptcy Code is hereby made applicable to the Debtors and to Glacier L.P. in these Chapter 15 Cases.

5. While this Order is in effect, Glacier L.P. shall be entitled to protections and rights coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Glacier L.P.'s assets within the territorial

jurisdiction of the United States. Specifically, all persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action involving Glacier L.P., its assets or the proceeds thereof, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against Glacier L.P. or its assets, (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against Glacier L.P. or any of its property, or (d) managing or exercising control over Glacier L.P.'s assets located within the territorial jurisdiction of the United States except as expressly authorized by Glacier L.P. in writing.

6. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

7. Pending disposition of the Chapter 15 Petitions, pursuant to section 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 is applicable to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States in the Chapter 15 Cases; provided, however, that nothing in this paragraph 7 shall limit, abridge, or otherwise effect: (i) the rights afforded the Agent and the DIP Lenders under the DIP Facility, Commitment Letter or the Initial Order.

8. The Debtors are authorized, on a provisional basis, to incur up to US\$10 million and CAD\$15 million under and in accordance with the terms of the DIP Facility and Commitment Letter, as defined in the Initial Order. In addition, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges,

security documents, guarantees and other documents (collectively, the “DIP Documents”) as are contemplated by the Commitment Letter or as may be reasonably requested by the DIP Lenders, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Commitment Letter and the DIP Facility without any need for further approval from this Court.

9. To the extent authorized under the Initial Order, the DIP Lenders are hereby granted, on a provisional basis, the DIP Lenders’ Charge, as defined in the Initial Order, on all of the Credit Parties’ United States assets in the amount of US \$10 million and CAD \$15 million minus the amount outstanding from time to time under the DIP Facility, subject to the priorities, terms and conditions of the Initial Order, to secure current and future amounts outstanding under the Commitment Letter and the DIP Facility. The obligations under the DIP Facility shall be on a joint and several basis for all Credit Parties (as defined in the Commitment Letter). As set forth in the Initial Order, all Arctic Glacier U.S. Group entities shall provide AGIF and Arctic Glacier Canada a lien that is a super-priority, first-ranking charge, on account of any funds extended by AGIF and Arctic Glacier Canada to any Arctic Glacier U.S. Group entity after the commencement of the Canadian Proceeding (the “Intercompany Liens”). The obligations arising under the DIP Facility shall be further secured by the Intercompany Liens. The Debtors’ Prepetition Secured Lenders have agreed to subordinate their prepetition liens to the Intercompany Liens.

10. To the extent provided in the Initial Order, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents as are contemplated in the Commitment Letter or by the DIP Facility or as may be reasonably required

by the DIP Lenders pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lenders under and pursuant to the Commitment Letter and the DIP Facility including, but not limited to, the fees and expenses of the DIP Lenders' Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court.

11. The DIP Documents and the Commitment Letter have been negotiated in good faith and at arms' length between the Debtors and the DIP Lenders. Any financial accommodations made to the Debtors by the DIP Lender pursuant to the Initial Order and the DIP Documents shall be deemed to have been made by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 105(a), 364(e), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lenders, and the validity of the indebtedness, and the priority of the liens authorized by the Initial Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

12. No action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Lenders including funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders or the Prepetition Secured Lenders to a charge against the collateral pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. The DIP Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.

Upon entry of a final order, recognizing these proceedings as foreign main proceedings, the Prepetition Secured Lenders shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the collateral.

13. Effective on a provisional basis upon entry of this Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 105, 506(c) or 552(b) of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of collateral or property after an Event of Default under the Commitment Letter, the First Lien Credit Agreement or the Second Lien Credit Agreement, or termination or breach under the Commitment Letter, the First Lien Credit Agreement, the Second Lien Credit Agreement, the Initial Order or this Order.

14. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding not stayed by section 362, or (b) staying the exercise of any rights that are not subject to stay arising under section 362(o).

15. Any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion on not less than seven (7) business days’ written notice to Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York, 10019, Attn: Mary K. Warren and Alex W. Cannon, and the Court will hear such motion on a date to be scheduled by the Court.

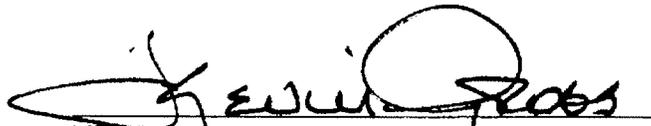
16. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the Monitor shall not be subject to any stay in the implementation, enforcement or realization of the relief granted in

this Order; and (c) the Monitor is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

17. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule 65(c) are hereby waived, to the extent applicable.

18. This Court shall retain jurisdiction with respect to any and all matters relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
February 23, 2012


KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY JUDGE