

**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.	:	

**STIPULATION AND AGREED ORDER GRANTING MATT CHOLEWA
PARTIAL AND LIMITED RELIEF FROM THE AUTOMATIC
STAY TO PROCEED WITH ACTION TO RECOVER
THIRD-PARTY INSURANCE PROCEEDS**

This Stipulation and Agreed Order is entered into by and between Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the “Monitor”) for the above-captioned debtors (collectively, the “Debtors”) in the proceeding (the “Canadian Proceeding”) commenced under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and pending before the Court of Queen’s Bench Winnipeg Centre (the “Canadian Court”), and Matt Cholewa (the “Claimant,” and together with the Monitor, the “Parties”). On February 22, 2012, the Monitor commenced these proceedings (the “Chapter 15 Cases”) by filing verified petitions on behalf of each of the Debtors, pursuant to sections 1504 and 1515 of title 11 of the United States Code (the

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 office is located at 1000 Main Street, Suite 100, Winnipeg, Manitoba, R3A 0V1, Canada.



“Bankruptcy Code”), seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

WHEREAS on February 22, 2012, the Debtors commenced the Canadian Proceeding, and the Canadian Court entered an initial order (including any extensions, amendments, or modifications thereto, the “Initial Order”), pursuant to the CCAA, providing various forms of relief thereunder.

WHEREAS on February 23, 2012, this Court entered the *Order Granting Provisional Relief* [Docket No. 28] (the “Provisional Relief Order”), providing for, among other things, a stay of all proceedings against or concerning property of the Debtors located within the territorial jurisdiction of the United States.

WHEREAS on March 16, 2012, this Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”). Pursuant to the Recognition Order, this Court granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, thereby extending during the pendency of these Chapter 15 Cases a stay of all proceedings against or concerning property of the Debtors located within the territorial jurisdiction of the United States.

WHEREAS on June 21, 2012, the Canadian Court entered that certain *Sale Approval and Vesting Order* (as amended and restated, the “CCAA Vesting Order”), pursuant to which the Canadian Court authorized and approved a sale of substantially all of the Debtors’ assets free and clear of all Claims and Encumbrances (as defined in the CCAA Vesting Order) to the Purchaser (as defined in the CCAA Vesting Order).

WHEREAS on July 17, 2012, this Court entered an Order [Docket No. 126] (the “U.S. Sale Order”) recognizing and giving full force and effect in the United States to the CCAA Vesting Order.

WHEREAS on September 5, 2012, the Canadian Court entered that certain *Claims Procedure Order* (the “Claims Procedure Order”) (a) establishing procedures for the submission of claims against the Debtors and their directors, officers, and trustees, and (b) setting a bar date of October 31, 2012.

WHEREAS on September 14, 2012, this Court entered an Order [Docket No. 166] (the “Claims Procedure Recognition Order”) recognizing and giving full force and effect in the United States to the Claims Procedure Order.

WHEREAS on October 5, 2012, the Claimant filed a Motion for Relief from the Automatic Stay to Proceed with State Court Personal Injury Action (the “Stay Relief Motion”).

WHEREAS the Claimant alleges that prior to July 27, 2012, the Claimant sustained personal injuries as a result of the negligence of Debtor Arctic Glacier Rochester, Inc., Atlantic Refinery Modeling Corp. and Sunoco A Plus Mini Mart (the “Defendants”) by permitting a dangerous condition on the premises located at 2977 Niagara Falls Boulevard, Amherst, New York (the “Alleged Injury”).

WHEREAS the Claimant seeks to continue an action filed on July 23, 2010 in the Supreme Court of the State of New York in and for the County of Niagara, Index No. 141470, against the Defendants and/or other of the Debtors (the “State Court Action”²) with respect to the Alleged Injury.

² As used herein, the “State Court Action” shall include a comparable proceeding, whether judicial or consensual, including any appeals thereto.

NOW THEREFORE, it is hereby stipulated and agreed that:

1. The stay imposed pursuant to sections 1521(a)(1) and 362(a) of the Bankruptcy Code is lifted to the extent necessary and for the sole purpose of permitting the Claimant to proceed with the State Court Action and, if applicable, to collect proceeds of available insurance coverage of certain Debtors in satisfaction of any judgment or settlement arising from the State Court Action.
2. The Claimant is not permitted to satisfy any judgment or settlement arising from the State Court Action from the Debtors' assets (other than from available proceeds of insurance policies of Arctic Glacier Rochester, Inc. or other Debtors, if applicable, as provided in paragraph 1), or the assets of the Debtors' subsidiaries, affiliates, successors, or assigns, or the Debtors' current or former shareholders or unitholders, directors, officers, agents, employees, attorneys, consultants, or professional advisors, or the Monitor (each an "Excused Person," and collectively, the "Excused Persons").
3. The Claimant shall not seek to join or otherwise make any Excused Person a party to the State Court Action or any other action related to the Alleged Injury, unless (a) such Excused Person was already joined as a party to the State Court Action as of the Petition Date, or (b) the joinder of an Excused Party is necessary and required by applicable non-bankruptcy law for the Claimant to pursue available insurance proceeds in satisfaction of any judgment or settlement arising from the Alleged Injury.
4. Nothing herein shall be construed to limit, modify or impair the Claimant's rights, claims and defenses with respect to his claims in the State Court Action against defendants Atlantic Refining & Marketing Corp. or Sunoco A Plus Mini Mart.
5. Other than as explicitly set forth herein, any and all protections and benefits afforded by the Initial Order, the Provisional Relief Order, the Recognition Order, the

CCAA Vesting Order, the U.S. Sale Order, the Claims Procedure Order, and/or the Claims Procedure Recognition Order to the Excused Persons shall remain in full force and effect, unless subsequently modified by an Order of this Court.

6. Nothing contained herein shall be construed to limit, modify or impair the Debtors' or their insurers' rights or obligations under any contractual agreement between the Debtors and their insurers.

7. Nothing contained herein is intended to be or should be construed as an admission of any fact, claim, right, or defense that the Parties, the Debtors or their insurers may have with respect to the State Court Action and all rights, claims, and defenses are hereby expressly reserved.

8. Upon approval of this Stipulation and Agreed Order by this Court, the Stay Relief Motion shall be deemed withdrawn without further action by the Parties.

9. If this Stipulation and Agreed Order is not approved by the Court, this Stipulation and Order shall be of no force and effect and none of its provisions will be deemed to prejudice or impair any of the Parties' or the Debtors' respective rights and remedies, nor may it be used in any way against any of the Parties or the Debtors in any litigation or contested matter.

10. This Stipulation and Agreed Order constitutes the entire agreement between the Parties relating to the subject matter hereof, notwithstanding any previous negotiations or agreements, whether oral or written, between the Parties with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, with respect to all or any part of the subject matter of this Stipulation and Agreed Order are superseded by this Stipulation and Agreed Order and shall be of no further force or effect.

11. The Parties have each cooperated in drafting this Stipulation and Agreed Order. Therefore, in any action or proceeding concerning this Stipulation and Agreed Order, the provisions hereof shall be construed as if jointly drafted by the Parties.

12. Each person who executes this Stipulation and Agreed Order by or on behalf of each Party warrants and represents that he has been duly authorized and empowered to execute and deliver this Stipulation on behalf of that Party.

13. This Court shall retain jurisdiction to interpret, enforce, and resolve any disputes arising under or related to this Stipulation and Agreed Order. Any motion or application brought before the Court to resolve any dispute arising under or related to this Stipulation and Agreed Order shall be brought on proper notice in accordance with the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware.

Signature Pages Follow

Dated: November 15, 2012
Wilmington, Delaware

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Dated: November 15, 2012
Wilmington, Delaware

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Counsel for Matt Cholewa

So Ordered:

Dated: ~~Nov. 15~~ **Nov. 16**, 2012
Wilmington, Delaware


The Honorable Kevin Gross
Chief United States Bankruptcy Judge