Exhibit 15

INDEMNIFICATION AND TOLLING AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made as of the 27th day of May 2010, by and between Arctic Glacier Inc., a Canadian company, ("Arctic Glacier") and Frank G. Larson, an individual ("Larson"), both of whom are sometimes hereinafter referred to as the "Parties."

RECITALS

A. WHEREAS, Larson is presently a named defendant in the lawsuit styled *Wayne Stanford v. Keith E. Corbin et al.* (Case No. 10-cv-11689-JF-RSW) (the "*Stanford* action"), which is pending in the United States District Court for the Eastern District of Michigan; and

B. WHEREAS, Larson was employed as the Executive Vice President of Operations for Arctic Glacier during the relevant times alleged in the complaint in the *Stanford* action; and

C. WHEREAS, the Parties desire to clarify Larson's rights to indemnification in the *Stanford* action, and the tolling of respective potential claims;

IT IS THEREFORE AGREED BETWEEN THE PARTIES:

1. In consideration of the following promises, monies, and covenants, Larson will refrain from filing a cross-action for indemnification in the *Stanford* action, in addition to the promises and covenants contained below.

2. In consideration of Larson's agreement to refrain from filing a cross-action for indemnification in the *Stanford* action, Arctic Glacier will reimburse Larson for all reasonable legal fees and expenses incurred in the *Stanford* action by Larson's attorneys, as follows:

   a. Legal fees ("Fees") include reasonable attorneys' fees and experts' fees incurred in defense of or as a witness in the *Stanford* action;

   b. Expenses ("Expenses") include all reasonable costs and charges incurred in the defense of the *Stanford* action; and

   c. Any accounts for Fees and Expenses must first be sent to Arctic Glacier for review and approval, and following approval will thereafter be paid within sixty days.

3. In further consideration of Larson's agreement not to file a cross-action for indemnification in the *Stanford* action against Arctic Glacier, and pursuant to By Law Number 1 of Arctic Glacier, s.6.03, Larson shall be indemnified and held harmless by Arctic Glacier as to any judgment entered against him, or for the amount of any settlements approved by Arctic Glacier, provided that such judgment or settlements arise from the allegations and/or findings in the *Stanford*

action that Larson's liability or potential liability arose from actions taken as an employee of Arctic Glacier, except where Larson acted against the stated instructions of Arctic Glacier.

4. As additional mutual consideration of the Parties for this agreement, during the pendency of the *Stanford* action, any claim Arctic Glacier may have against Larson, and any claim that Larson may have against Arctic Glacier, including, but not limited to any claims contemplated by, forebeared as a result of, or arising out of this Indemnification and Tolling Agreement, shall be tolled. This tolling shall extend for forty-five days beyond final judgment or dismissal of the *Stanford* action.

5. Arctic Glacier recognizes Larson's continuing right to retain and consult with independent counsel with regard to his defense of the *Stanford* action. It is anticipated by both Parties, however, that the law firm of Jones Day ("Jones Day") will serve as Larson's counsel in the *Stanford* action and any fees incurred by Larson will be minimal.

6. Larson understands that Keith E. Corbin and Gary D. Cooley, Corbin's co-defendants in the *Stanford* action, have also retained Jones Day to represent their respective individual interests in the *Stanford* action. Corbin understands that, as a consequence of the joint representation in the *Stanford* matter, the attorney-client privilege will not shield communications between Larson and Jones Day from disclosure to Keith Corbin or Gary Cooley. While all communications regarding the pending *Stanford* lawsuit are considered privileged as against third parties, they are not privileged as against another joint client.

7. Larson further understands that Arctic Glacier has retained Jones Day to represent its interests in connection with multiple lawsuits and governmental investigations relating to Arctic Glacier's alleged criminal and civil violations of state and federal antitrust laws through agreements among packaged ice manufacturers to restrain competition with respect to certain customers and certain geographic regions. The allegations pending against Arctic Glacier are substantially similar to those charged in the *Stanford* action. Given the similarities between the allegations in the *Stanford* action and those pending against the Company, coupled with the fact that Arctic Glacier is indemnifying Larson for any reasonable legal fees incurred and damages that might be awarded in the *Stanford* action, Larson understands that Jones Day's representation of Larson and the company will be treated as a joint representation. As a consequence of this joint representation, the attorney-client privilege will not shield communications between Larson and Jones Day from disclosure to Arctic Glacier. While all communications regarding the pending *Stanford* lawsuit are considered privileged as against third parties, they are not privileged as against another joint client.

8. In exchange for this promise of indemnification, Larson agrees to cooperate with

Jones Day in the defense of this matter and will not charge or demand payment from Arctic Glacier for his personal time spent assisting in his defense, *e.g.*, locating and producing documents, providing information to counsel, assisting in discovery responses as needed, giving testimony, or in any other manner, to the extent such requests are reasonable and customary for a party to a civil action. This paragraph shall not preclude Larson from entitlement to prompt reimbursement from Arctic Glacier for his reasonable counsel's attorney's fees and costs.

9. Arctic Glacier and Larson each perceives that it has been and remains in their best interests to work together to defend against the claims in the *Stanford* action, to exchange information, to pool their respective individual work product, and to cooperate in order to defeat the claims against Larson in the *Stanford* action. Each party recognizes and acknowledges that cooperation in such a joint defense effort has and may continue to involve communications and the exchange of information, documents and materials protected by the attorney-client privilege, attorney work product doctrine and/or other privileges and/or protections. Each party agrees that all information, documents and materials received from the other or exchanged between them which are protected by the attorney-client privilege, attorney work product doctrine and/or any other privileges and/or protections, and all information, documents and materials derived therefrom if any, have been received or exchanged in confidence solely for the purpose of securing legal advice and representation in connection with the *Stanford* action.

10. This Agreement may be signed in counterparts, each of which shall be deemed an original, and may be sufficiently evidenced by one copy of the Agreement together with the signature pages of both counterparts.

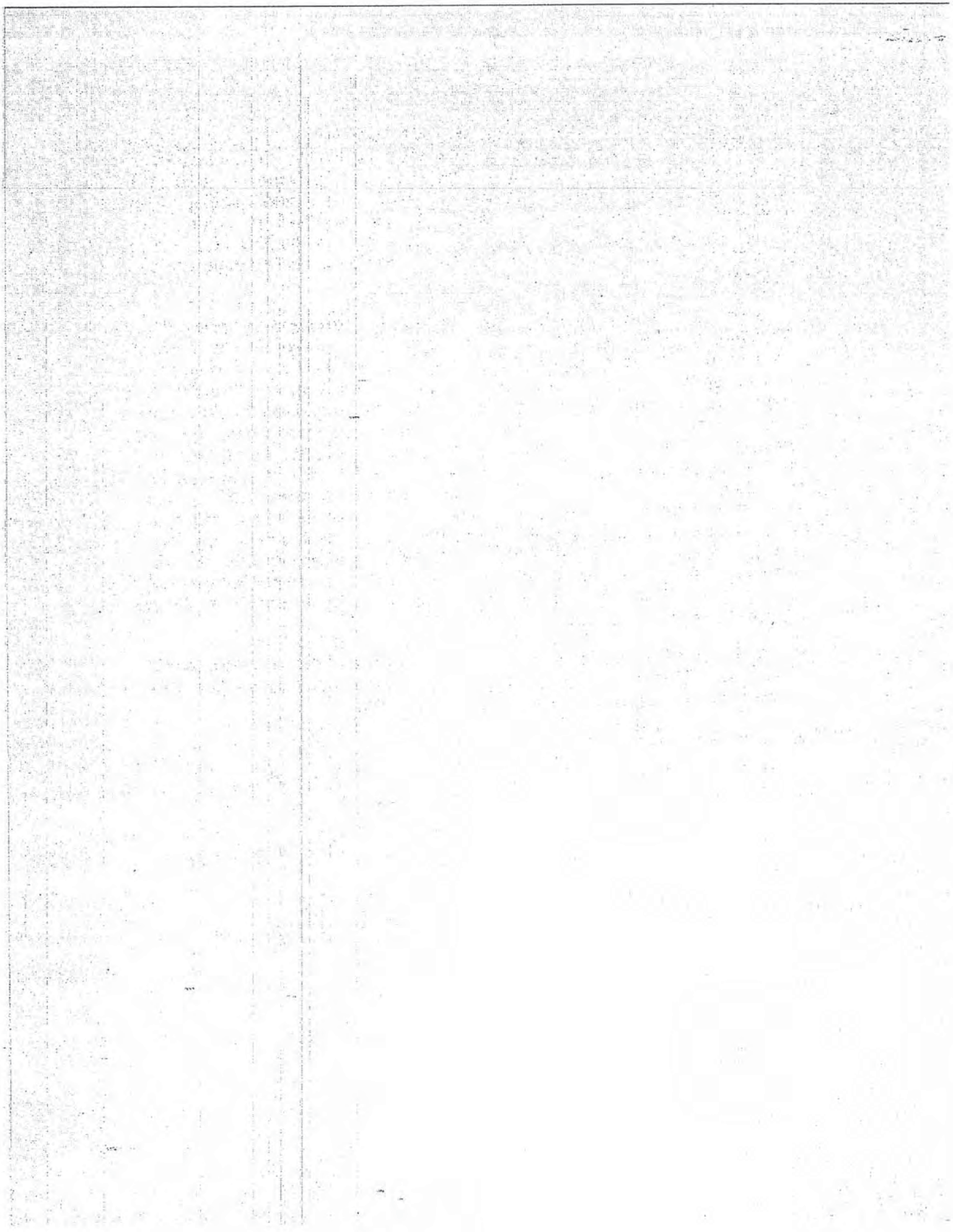
AGREED AND ACCEPTED:

DATED: _____

BY: _____
Keith McMahon
President & CEO, Arctic Glacier Inc.

DATED: 7/2/2010

BY: _____
Frank G. Larson, individually



INDEMNIFICATION AND TOLLING AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made as of the 27th day of May 2010, by and between Arctic Glacier Inc., a Canadian company, ("Arctic Glacier") and Keith E. Corbin, an individual ("Corbin"), both of whom are sometimes hereinafter referred to as the "Parties."

RECITALS

A. WHEREAS, Corbin is presently a named defendant in the lawsuit styled *Wayne Stanford v. Keith E. Corbin et al.* (Case No. 10-cv-11689-JF-RSW) (the "*Stanford* action"), which is pending in the United States District Court for the Eastern District of Michigan; and

B. WHEREAS, Corbin was employed as the Executive Vice President of Operations for Arctic Glacier during the relevant times alleged in the complaint in the *Stanford* action; and

C. WHEREAS, the Parties desire to clarify Corbin's rights to indemnification in the *Stanford* action, and the tolling of respective potential claims;

IT IS THEREFORE AGREED BETWEEN THE PARTIES:

1. In consideration of the following promises, monies, and covenants, Corbin will refrain from filing a cross-action for indemnification in the *Stanford* action, in addition to the promises and covenants contained below.

2. In consideration of Corbin's agreement to refrain from filing a cross-action for indemnification in the *Stanford* action, Arctic Glacier will reimburse Corbin for all reasonable legal fees and expenses incurred in the *Stanford* action by Corbin's attorneys, as follows:

a. Legal fees ("Fees") include reasonable attorneys' fees and experts' fees incurred in defense of or as a witness in the *Stanford* action;

b. Expenses ("Expenses") include all reasonable costs and charges incurred in the defense of the *Stanford* action; and

c. Any accounts for Fees and Expenses must first be sent to Arctic Glacier for review and approval, and following approval will thereafter be paid within sixty days.

3. In further consideration of Corbin's agreement not to file a cross-action for indemnification in the *Stanford* action against Arctic Glacier, and pursuant to By Law Number 1 of Arctic Glacier, s.6.03, Corbin shall be indemnified and held harmless by Arctic Glacier as to any judgment entered against him, or for the amount of any settlements approved by Arctic Glacier, provided that such judgment or settlements arise from the allegations and/or findings in the *Stanford*

action that Corbin's liability or potential liability arose from actions taken as an employee of Arctic Glacier, except where Corbin acted against the stated instructions of Arctic Glacier.

4. As additional mutual consideration of the Parties for this agreement, during the pendency of the *Stanford* action, any claim Arctic Glacier may have against Corbin, and any claim that Corbin may have against Arctic Glacier, including, but not limited to any claims contemplated by, forebeared as a result of, or arising out of this Indemnification and Tolling Agreement, shall be tolled. This tolling shall extend for forty-five days beyond final judgment or dismissal of the *Stanford* action.

5. Arctic Glacier recognizes Corbin's continuing right to retain and consult with independent counsel with regard to his defense of the *Stanford* action. It is anticipated by both Parties, however, that the law firm of Jones Day ("Jones Day") will serve as Corbin's counsel in the *Stanford* action and any fees incurred by Corbin will be minimal.

6. Corbin understands that Frank G. Larson and Gary D. Cooley, Corbin's co-defendants in the *Stanford* action, have also retained Jones Day to represent their respective individual interests in the *Stanford* action. Corbin understands that, as a consequence of the joint representation in the *Stanford* matter, the attorney-client privilege will not shield communications between Corbin and Jones Day from disclosure to Keith Corbin or Gary Cooley. While all communications regarding the pending *Stanford* lawsuit are considered privileged as against third parties, they are not privileged as against another joint client.

7. Corbin further understands that Arctic Glacier has retained Jones Day to represent its interests in connection with multiple lawsuits and governmental investigations relating to Arctic Glacier's alleged criminal and civil violations of state and federal antitrust laws through agreements among packaged ice manufacturers to restrain competition with respect to certain customers and certain geographic regions. The allegations pending against Arctic Glacier are substantially similar to those charged in the *Stanford* action. Given the similarities between the allegations in the *Stanford* action and those pending against the Company, coupled with the fact that Arctic Glacier is indemnifying Corbin for any reasonable legal fees incurred and damages that might be awarded in the *Stanford* action, Corbin understands that Jones Day's representation of Corbin and the company will be treated as a joint representation. As a consequence of this joint representation, the attorney-client privilege will not shield communications between Corbin and Jones Day from disclosure to Arctic Glacier. While all communications regarding the pending *Stanford* lawsuit are considered privileged as against third parties, they are not privileged as against another joint client.

8. In exchange for this promise of indemnification, Corbin agrees to cooperate with

Jones Day in the defense of this matter and will not charge or demand payment from Arctic Glacier for his personal time spent assisting in his defense, *e.g.*, locating and producing documents, providing information to counsel, assisting in discovery responses as needed, giving testimony, or in any other manner, to the extent such requests are reasonable and customary for a party to a civil action. This paragraph shall not preclude Corbin from entitlement to prompt reimbursement from Arctic Glacier for his reasonable counsel's attorney's fees and costs.

9. Arctic Glacier and Corbin each perceives that it has been and remains in their best interests to work together to defend against the claims in the *Stanford* action, to exchange information, to pool their respective individual work product, and to cooperate in order to defeat the claims against Corbin in the *Stanford* action. Each party recognizes and acknowledges that cooperation in such a joint defense effort has and may continue to involve communications and the exchange of information, documents and materials protected by the attorney-client privilege, attorney work product doctrine and/or other privileges and/or protections. Each party agrees that all information, documents and materials received from the other or exchanged between them which are protected by the attorney-client privilege, attorney work product doctrine and/or any other privileges and/or protections, and all information, documents and materials derived therefrom if any, have been received or exchanged in confidence solely for the purpose of securing legal advice and representation in connection with the *Stanford* action.

10. This Agreement may be signed in counterparts, each of which shall be deemed an original, and may be sufficiently evidenced by one copy of the Agreement together with the signature pages of both counterparts.

AGREED AND ACCEPTED:

DATED: _____ BY: _____
Keith McMahon
President & CEO, Arctic Glacier Inc.

DATED: JUNE 30, 2010 BY: _____
Keith E. Corbin, individually

INDEMNIFICATION AND TOLLING AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement") is made as of the 27th day of May 2010, by and between Arctic Glacier Inc., a Canadian company, ("Arctic Glacier") and Gary D. Cooley, an individual ("Cooley"), both of whom are sometimes hereinafter referred to as the "Parties."

RECITALS

A. WHEREAS, Cooley is presently a named defendant in the lawsuit styled *Wayne Stanford v. Keith E. Corbin et al.* (Case No. 10-cv-11689-JF-RSW) (the "*Stanford* action"), which is pending in the United States District Court for the Eastern District of Michigan; and

B. WHEREAS, Cooley was employed as the Executive Vice President of Operations for Arctic Glacier during the relevant times alleged in the complaint in the *Stanford* action; and

C. WHEREAS, the Parties desire to clarify Cooley's rights to indemnification in the *Stanford* action, and the tolling of respective potential claims;

IT IS THEREFORE AGREED BETWEEN THE PARTIES:

1. In consideration of the following promises, monies, and covenants, Cooley will refrain from filing a cross-action for indemnification in the *Stanford* action, in addition to the promises and covenants contained below.

2. In consideration of Cooley's agreement to refrain from filing a cross-action for indemnification in the *Stanford* action, Arctic Glacier will reimburse Cooley for all reasonable legal fees and expenses incurred in the *Stanford* action by Cooley's attorneys, as follows:

   a. Legal fees ("Fees") include reasonable attorneys' fees and experts' fees incurred in defense of or as a witness in the *Stanford* action;

   b. Expenses ("Expenses") include all reasonable costs and charges incurred in the defense of the *Stanford* action; and

   c. Any accounts for Fees and Expenses must first be sent to Arctic Glacier for review and approval, and following approval will thereafter be paid within sixty days.

3. In further consideration of Cooley's agreement not to file a cross-action for indemnification in the *Stanford* action against Arctic Glacier, and pursuant to By Law Number 1 of Arctic Glacier, s.6.03, Cooley shall be indemnified and held harmless by Arctic Glacier as to any judgment entered against him, or for the amount of any settlements approved by Arctic Glacier, provided that such judgment or settlements arise from the allegations and/or findings in the *Stanford*

action that Cooley's liability or potential liability arose from actions taken as an employee of Arctic Glacier, except where Cooley acted against the stated instructions of Arctic Glacier.

4. As additional mutual consideration of the Parties for this agreement, during the pendency of the *Stanford* action, any claim Arctic Glacier may have against Cooley, and any claim that Cooley may have against Arctic Glacier, including, but not limited to any claims contemplated by, forebeared as a result of, or arising out of this Indemnification and Tolling Agreement, shall be tolled. This tolling shall extend for forty-five days beyond final judgment or dismissal of the *Stanford* action.

5. Arctic Glacier recognizes Cooley's continuing right to retain and consult with independent counsel with regard to his defense of the *Stanford* action. It is anticipated by both Parties, however, that the law firm of Jones Day ("Jones Day") will serve as Cooley's counsel in the *Stanford* action and any fees incurred by Cooley will be minimal.

6. Cooley understands that Keith E. Corbin and Frank G. Larson, Cooley's co-defendants in the *Stanford* action, have also retained Jones Day to represent their respective individual interests in the *Stanford* action. Cooley understands that, as a consequence of the joint representation in the *Stanford* matter, the attorney-client privilege will not shield communications between Cooley and Jones Day from disclosure to Keith Corbin or Frank Larson. While all communications regarding the pending *Stanford* lawsuit are considered privileged as against third parties, they are not privileged as against another joint client.

7. Cooley further understands that Arctic Glacier has retained Jones Day to represent its interests in connection with multiple lawsuits and governmental investigations relating to Arctic Glacier's alleged criminal and civil violations of state and federal antitrust laws through agreements among packaged ice manufacturers to restrain competition with respect to certain customers and certain geographic regions. The allegations pending against Arctic Glacier are substantially similar to those charged in the *Stanford* action. Given the similarities between the allegations in the *Stanford* action and those pending against the Company, coupled with the fact that Arctic Glacier is indemnifying Cooley for any reasonable legal fees incurred and damages that might be awarded in the *Stanford* action, Cooley understands that Jones Day's representation of Cooley and the company will be treated as a joint representation. As a consequence of this joint representation, the attorney-client privilege will not shield communications between Cooley and Jones Day from disclosure to Arctic Glacier. While all communications regarding the pending *Stanford* lawsuit are considered privileged as against third parties, they are not privileged as against another joint client.

8. In exchange for this promise of indemnification, Cooley agrees to cooperate with

Jones Day in the defense of this matter and will not charge or demand payment from Arctic Glacier for his personal time spent assisting in his defense, *e.g.*, locating and producing documents, providing information to counsel, assisting in discovery responses as needed, giving testimony, or in any other manner, to the extent such requests are reasonable and customary for a party to a civil action. This paragraph shall not preclude Cooley from entitlement to prompt reimbursement from Arctic Glacier for his reasonable counsel's attorney's fees and costs.

9. Arctic Glacier and Cooley each perceives that it has been and remains in their best interests to work together to defend against the claims in the *Stanford* action, to exchange information, to pool their respective individual work product, and to cooperate in order to defeat the claims against Cooley in the *Stanford* action. Each party recognizes and acknowledges that cooperation in such a joint defense effort has and may continue to involve communications and the exchange of information, documents and materials protected by the attorney-client privilege, attorney work product doctrine and/or other privileges and/or protections. Each party agrees that all information, documents and materials received from the other or exchanged between them which are protected by the attorney-client privilege, attorney work product doctrine and/or any other privileges and/or protections, and all information, documents and materials derived therefrom if any, have been received or exchanged in confidence solely for the purpose of securing legal advice and representation in connection with the *Stanford* action.

10. This Agreement may be signed in counterparts, each of which shall be deemed an original, and may be sufficiently evidenced by one copy of the Agreement together with the signature pages of both counterparts.

AGREED AND ACCEPTED:

DATED: _____

BY: _____
Keith McMahon
President & CEO, Arctic Glacier Inc.

DATED: 5/11/10

BY: _____
Gary D. Cooley, individually

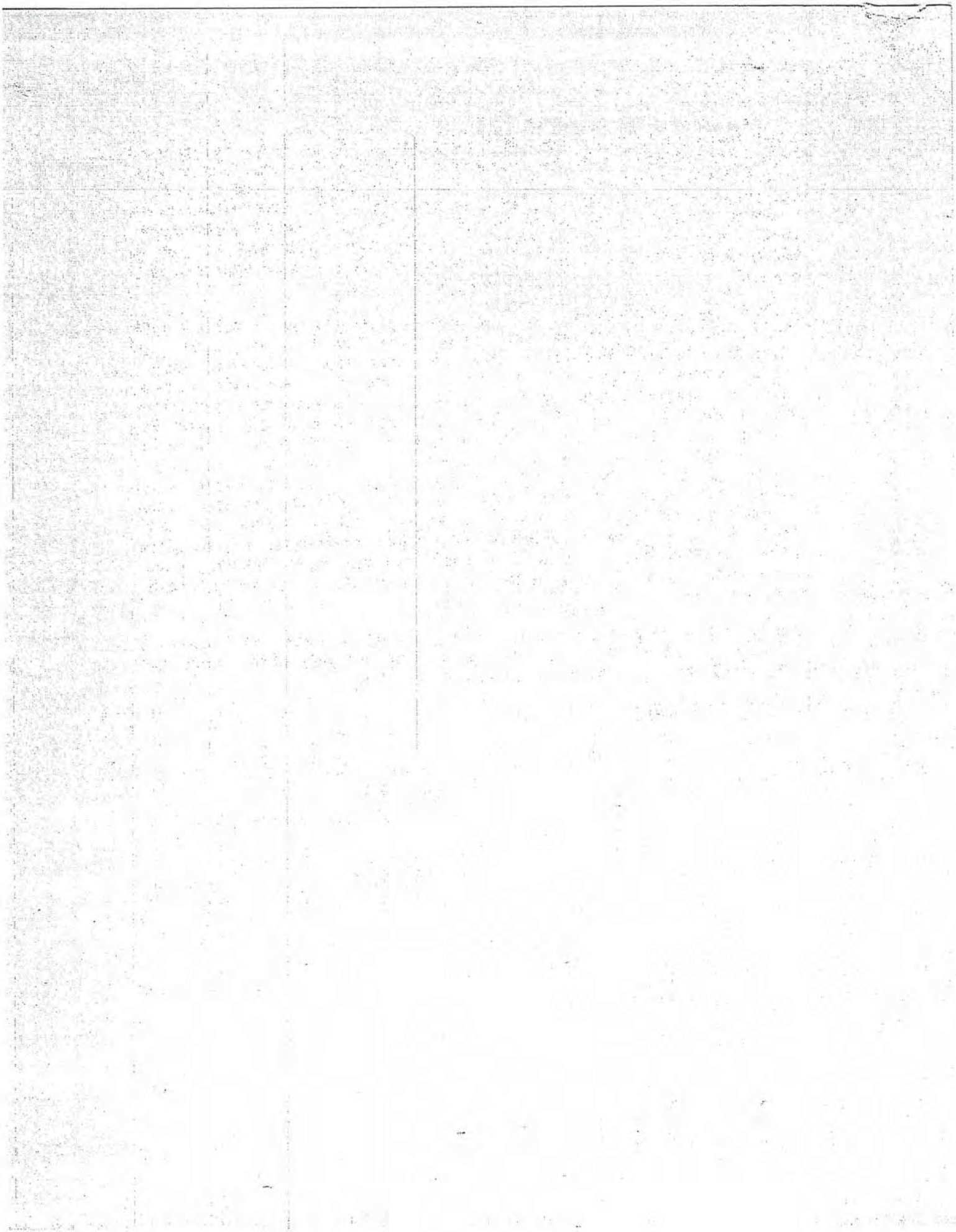


Exhibit 16

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: Packaged Ice Antitrust Litigation

HONORABLE PAUL D. BORMAN
No. 08-MD-1952

_____/

WAYNE STANFORD,
Plaintiff,

HONORABLE PAUL D. BORMAN
No. 10-11689

v.

KEITH CORBIN, et al.,
Defendants.

_____/

HEARING REGARDING MOTION TO DISQUALIFY JONES DAY AND DYKEMA GOSSETT

Thursday, February 3, 2011
11:41 a.m.

APPEARANCES:

For the Plaintiffs:

MATTHEW S. WILD
Wild Law Group, PLLC
178 Myrtle Boulevard
Suite 104
Larchmont, New York 10538
(914) 630-7500

JOHN M. PERRIN, Of Counsel
Wild Law Group, PLLC
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(586) 773-9500

(Appearances continued)

APPEARANCES:

For Plaintiffs (Continued):

MAX WILD, Of Counsel
Wild Law Group, PLLC
98 Distillery Road
Warwick, New York 10990
(845) 986-6931

For Defendant Arctic Glacier:

MELISSA B. HIRST
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Jones Day
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(248) 203-0526

LISA A. BROWN
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HUGH A. ADAMS, Secretary
Arctic Glacier, Inc.
360 Main Street, 30th Floor
Winnipeg, Manitoba R3C 4G1
(204) 957-0050

For Defendant Larson:

WILLIAM MICHAEL, JR.
Dorsey & Whitney, LLP
50 South Sixth Street
Suite 1500
Minneapolis, Minnesota 55402
(612) 492-6753

APPEARANCES (Continued):

For Defendant Cooley:

STEPHEN J. BUTLER
Thompson Hine LLP
312 Walnut Street, 14th Floor
Cincinnati, Ohio 45202
(513) 352-6587

TABLE OF CONTENTS

February 3, 2011

Detroit, Michigan

- - -

(Call to order of the court, 11:41 a.m.)

THE LAW CLERK: The Court calls case number 10-11686, *Stanford versus Corbin*, and 08-1952, *In Re: Packaged Ice*.

You may be seated.

MR. MATT WILD: Good morning, Your Honor.

THE COURT: Wait a minute. Have a seat. Yes?

MR. MATT WILD: We don't know whether you'd like us to sit at counsel table or the audience.

THE COURT: Right. You can sit in the audience, and then if need be, we'll call you up.

MR. MAX WILD: Thank you.

MR. MATT WILD: Thank you, Your Honor.

THE COURT: So let me get, first, a list of counsel for the defense. Why don't we start with Jones Day, and then we'll go to Dykema, and then we'll go to the independent counsel further, so, please.

MS. RENDER: Your Honor, my name is Paula Render from Jones Day for Defendants.

THE COURT: Okay.

MS. HIRST: Melissa Hirst, H-i-r-s-t, with Defendants from Jones Day.

THE COURT: Okay.

MR. WALKER: Your Honor, I'm Bob Walker from Jones Day. Good morning.

THE COURT: Okay. Good morning.

MR. IWREY: Your Honor, Howard Iwrey, I-w-r-e-y, Dykema, for the Defendants.

MS. BROWN: And Lisa Brown from Dykema as well.

THE COURT: Okay. And we're going now to independent counsel -- well, since you're at the table. Identify the other individuals there, so.

MS. RENDER: Your Honor, this is Frank Larson.

THE COURT: Okay.

MS. RENDER: And Gary Cooley.

THE COURT: Very good. Okay.

Yes, sir?

MR. MICHAEL: Good morning, Judge. Bill Michael on behalf of Mr. Larson.

THE COURT: What firm are you with?

MR. MICHAEL: Dorsey and Whitney out of Minnesota.

MR. BUTLER: Good morning, Your Honor. I'm Steve Butler with Thompson Hine in Cincinnati. I'm independent counsel for Gary Cooley.

MS. RENDER: Your Honor, if I may, also, we have a certification from Keith Corbin regarding the reasons he's not here in the courtroom today.

THE COURT: Right.

MS. RENDER: If that's helpful to you.

THE COURT: Right. Well, I put in the order if he was unable to be here for physical reasons that I would go down there and deal with this after this hearing. Is that basically what the reasons are?

MS. RENDER: Yes, reasons of health.

THE COURT: Okay. Very good. So let's begin the process with the facts, as I see them, relating to the two cases we're talking about, and we're talking about the Michigan case and we're also talking about the indirect purchaser case.

In the Michigan case there are three Defendants named individually, and in the issue before the Court is the ability to waive potential conflicts of interest. When I sent out the initial order, I had concerns, and the more educated I get based on pleadings, the more concerns I have with regard to this issue. I have some questions that I'm going to be asking and -- to the extent certain things that are not under the attorney-client privilege. Certain things are. If a lawyer wishes to talk about it, then we'll discuss whether or not it is under the attorney-client privilege.

In the agreements, the retainer agreements that I've seen with the independent counsel, that would be Mr. Michael and Mr. Butler, it indicates that we are retaining you for the purpose of the antitrust investigation, the criminal one, and what I'm wondering is what brings you here today in terms of

who are you representing and is there a separate retainer agreement that you all have with the individuals here, Mr. Larson and Mr. Cooley? Is there an appendix to the original retainer agreements that you had with those individuals as you represented them in the antitrust, the criminal antitrust investigation? So maybe -- I'll start with Jones Day. If there's anything that they can enlighten the Court on with regard to how the independent counsel got here today. I know they got here probably a couple days ago, and the weather -- we have a grand jury looking into obstruction of justice for the weather people because they said it was a blizzard and there was five inches, and the courthouse was wonderful yesterday. It was easy to get to work, sunny, but that's a separate matter.

MS. RENDER: Thank you, Your Honor. We certainly asked the independent counsel to be here today because they have been available to and advising Mr. Cooley and Mr. Larson throughout. I think that they --

THE COURT: Have there been any addenda to the retainer agreements which originally said that we are hiring you -- or the agreements actually with the Defendants that we are representing you in this criminal matter only?

MS. RENDER: I'll have to defer to individual counsel to answer that question, whether there are any such addenda and what their arrangements have been in terms of the engagement.

THE COURT: But they have continued to consult and represent the individual Defendants is what you're saying.

MS. RENDER: They have, Your Honor. Because of the uncertainties with respect to the motion to disqualify and then this proceeding, we have felt that it was best for them to handle most of the communications with Mr. Larson and Mr. Cooley, and the company has also agreed to make those counsel available to Mr. Larson and Mr. Cooley on an ongoing basis for whatever issues they may have.

THE COURT: There's nothing written, but what you're stating on the record is what the company is going to be doing, continuing to represent -- provide individual representation to these individuals. And if there's something in one of the agreements that I'm missing, then please advise me.

MS. RENDER: I would defer to individual counsel to discuss their retainer agreements.

THE COURT: Okay. But are those retainer agreements within the big package --

MS. RENDER: Yes.

THE COURT: -- that I have? And if so, if you can point me to one, then I won't have to waste everybody's time on doing that.

MS. RENDER: I believe that the retainer agreements with Mr. Michael and Mr. Butler are in the package --

THE COURT: Right.

MS. RENDER: And, for example, tab number one --

THE COURT: Okay.

MS. RENDER: -- is Mr. Butler's retainer agreement with Mr. Cooley, and I'm just not certain, Your Honor, what the practice of those law firms is in terms of limiting the engagement very strictly or not.

THE COURT: Well, it says:

The scope of representation on page one is -- we have been engaged to represent you in connection with an ongoing investigation by the U.S. Department of Justice concerning alleged violations of the U.S. antitrust laws in the packaged ice inquiry -- I'm sorry, in the packaged ice industry.

Then going up to the page four:

Unless you ac -- and this is, again, addressed to Mr. Cooley, for example, page four, unless you actually engage us after the completion to provide additional service on issues arising from the matter, the firm has no continuing obligation to advise you with respect to future legal or other developments.

So that's what spawned my question.

MS. RENDER: And I'm not aware of another retainer

agreement that Mr. Butler has with Mr. Cooley.

THE COURT: So it's kind of an unwritten agreement that you have asked, Arctic Glacier has asked them, the counsel, to continue providing representation, that -- and we'll get to it in a minute, that you have had them counsel the clients with regard to your representation of them in the two cases we're here about and matters like that. So it's ongoing, beyond the scope that's put forth in the original retainer agreement.

MS. RENDER: I think that's right, Your Honor.

THE COURT: Let me just ask Mr. Michael if that's his understanding as well and Mr. Butler if that's his understanding as well.

MR. MICHAEL: Judge, on behalf of Mr. Larson --

THE COURT: Why don't you all come up to the table and then that way we'll have you all there and --

MR. MICHAEL: Your Honor, on behalf of Mr. Larson, Dorsey was retained to represent him in the Department of Justice criminal case.

THE COURT: Right.

MR. MICHAEL: We were also retained and engaged in a separate engagement letter for a matter up in Canada.

THE COURT: The *Knowles*?

MR. MICHAEL: Pardon me?

THE COURT: The *Knowles*.

MR. MICHAEL: It was the *Doby (phonetic) and Benson versus Arctic Glacier*. It's a security class action up in Canada.

THE COURT: Okay.

MR. MICHAEL: And we entered into a separate engagement letter with Mr. Larson with respect to that --

THE COURT: For the Canadian action.

MR. MICHAEL: Correct, which also covers then meeting with Mr. Larson and other attorneys on behalf of Arctic Glacier on that matter as well.

THE COURT: On the Canadian matter?

MR. MICHAEL: Correct.

THE COURT: Nothing with regard to this, but it's a continuation.

MR. MICHAEL: Correct, Judge.

THE COURT: Okay. Let me ask Mr. Butler, same verse.

MR. BUTLER: Your Honor, essentially the same thing. We have the engagement letter from March 12, 2008, which you were reading from. At the top of page four, it also says:

> Unless previously terminated, our representation of you as to this matter will terminate upon our sending to Arctic Glacier our final statement for services rendered.

Perhaps we could have been more precise, but we continue to understand with Mr. Cooley that we're operating

under the terms of this engagement letter with respect to any assistance he might need in this case.

THE COURT: Okay. Can you, beginning with Mr. Michael, set forth the question or the answer as to whether you have continued to meet with Mr. Larson with regard to the issue before us here on the question of disqualification, conflict, relating to these two matters?

MR. MICHAEL: Yes, Judge. When this matter was first filed -- perhaps I could set the stage chronologically. It might help the Court. Mr. Larson had already gone through the criminal proceeding. He had also been named in the Canadian action. So he had independent Canadian counsel as well at the time of the filing of this case. So at the time of the filing of this case, both myself and his independent Canadian counsel in the securities class action spoke with Mr. Larson concerning the issues involving a joint representation by Jones Day. We spent time going through that with him, answered all of his questions, raised the issues that we felt were appropriate and necessary to ensure that he made an informed decision.

THE COURT: Were Jones Day or Dykema counsel there with you when you went over these matters with Mr. Larson?

MR. MICHAEL: No, Judge.

THE COURT: Okay.

MR. MICHAEL: And we did that with the Canadian counsel telephonically because we didn't see the need to bring

them down to Minnesota for that discussion.

Then there came a time -- and that was prior to Mr. Larson making the decision that he would be willing to consent to the joint representation by Jones Day. We then advised Jones Day that Mr. Larson had spoken with us and that he was willing to go forward with the joint representation.

There came a time later where I believe it was in mid May we were made aware by Jones Day that the Plaintiffs had made what I'll call an offer. A copy of a May 13th letter was provided to me by Jones Day. I was asked to go through that information with Mr. Larson. I did that independent of Jones Day. They were not present during our discussions. I also brought in the Canadian counsel to those discussions.

Additionally, we were provided by Jones Day a follow-up e-mail. I believe it's dated May 18th, setting forth perhaps some clarification to the Plaintiffs' offer, if you will. I was given a copy of that. I went through that with Mr. Larson independent of Jones Day, and we went through it with Canadian counsel available to Mr. Larson as well. We talked to Mr. Larson about all of the issues we believed that offer raised. Mr. Larson had all of his questions answered by myself and Canadian counsel, and at the conclusion of that I conveyed to Jones Day that Mr. Larson was not interested in the offer that had been extended.

THE COURT: Did you discuss with them the fact that in

the Canadian agreements with them and Jones Day that Arctic had said that both Canadian law and their board's, I guess, parameters provided that there could be situations where if they stated certain things, that they could not only lose indemnification but also have a clawback of possible fees that Arctic Glacier paid to you if they talked about things but indicated they were acting inimicable to the corporation's best interest or violations of law?

MR. MICHAEL: Judge, I apologize. I want to be a little careful about getting into my actual discussions with Mr. Larson --

THE COURT: Right.

MR. MICHAEL: -- because of the privilege. But I will tell you that the indemnification concerning the Canadian matter was one of the key reasons I was concerned the Canadian counsel be involved.

THE COURT: Smart.

MR. MICHAEL: I was not aware of and -- nor competent to address Canadian indemnification law. And I will tell the Court that I was satisfied that Canadian counsel was competent in that area.

THE COURT: Okay. In terms of the statements that clients might make in the U.S. litigation, these two civil cases that you are independently consulting with them on, did you also talk to them about the potential -- or make them aware

of the potential with regard to lack of indemnification and clawback if certain matters were to be admitted by them?

MR. MICHAEL: Judge, we certainly would -- and, again, I apologize. I don't want to be seen as dancing.

THE COURT: No, don't apologize.

MR. MICHAEL: I'm trying to be careful. Indemnification is certainly a very real concern both with respect to fees and any potential judgment in this matter or in the Canadian matter, and, thankfully, he hasn't been named in any other case. So those are things that we're -- we had discussions about and we continue to have discussions about to ensure that he's fully aware of the potential implications that could impact him not just the indemnification agreement itself but what could potentially happen to that indemnification agreement if a Court deems that it's not enforceable or if a Court might find that other mechanisms for indemnification aren't enforceable.

THE COURT: Okay. Then that gives me a good understanding of the situation, and have you spoken to them prior today with regard to what we're here about today?

MR. MICHAEL: Do you mean with Mr. Larson?

THE COURT: Yes.

MR. MICHAEL: Yes, in depth.

THE COURT: Very good. I'm going to ask Miss Render a question, and then if you or Mr. Butler, either of you, have

additional information. In terms of the financial liability of Arctic Glacier to indemnify, is there something that you're aware of with regard to Arctic Glacier's financial health so that as to whether that's a real potential benefit or whether it's a potential nonexistent situation that you can help the Court understand that? I know that was raised and it is before the Court.

MS. RENDER: Certainly. Your Honor, Arctic Glacier Income Fund is the ultimate parent.

THE COURT: Parent. They're in Winnipeg.

MS. RENDER: They're in Winnipeg, exactly. And that's a public company that discloses its financials publicly under the Canadian regulation for those kinds of disclosures. They report on their earnings every quarter, and so the financial condition of the company is very much a public -- a set of public facts. I don't think it's any secret to people who study those financials that Arctic has had a very difficult time over the last year or two, but I think it's very clear from those financials that Arctic Glacier is an ongoing enterprise and that it does not -- I mean we're trying to predict the future here, but I don't think that anyone is aware of any event or anything that is likely to, you know, require disclosure in the imminent future.

THE COURT: Okay. Very good. Then let me ask Mr. Butler, you heard the line of questions that I addressed to

Mr. Michael. Do you have anything different in your representation situation? Did you meet with Mr. Cooley directly?

MR. BUTLER: Yes, Your Honor. Excuse me. When Mr. Cooley was served in the *Stanford* action, he called me, and we talked through the same types of issues that Mr. Michael described that he discussed with Mr. Larson. There is perhaps one difference in the sense that Mr. Cooley is not a party to the *Knowles* case in Canada, so that aspect didn't come into it. But we discussed, Mr. Cooley and I and my partner, Doug Grover, who is --

THE COURT: Would you just spell his last name to help Ms. Lizza.

MR. BUTLER: G-r-o-v-e-r.

THE COURT: Thank you.

MR. BUTLER: Who is also involved with me in the Department of Justice matter. We had a number of discussions with Mr. Cooley, as I said, about the same issues that Mr. Michael described.

THE COURT: Okay. Let me go and speak for a moment first to Mr. Larson, and he can appear with his counsel. Why don't you, both you and Mr. Michael, come to the podium and let me ask you a few questions and we'll continue.

Just for the record, did you meet with Mr. Larson with regard to the two cases that we're here about?

MR. LARSON: I met with Mr. Michael.

THE COURT: I'm sorry.

MR. LARSON: That's okay. That's okay. Yes, I met with Mr. Michael in depth.

THE COURT: Okay. And did he go over all the matters with regard to each of the specific cases, the *Stanford* case and the indirect purchaser case?

MR. LARSON: Yes, he did.

THE COURT: Okay. With regard to the legal fees, your understanding is that they are being paid by Arctic Glacier?

MR. LARSON: That's correct.

THE COURT: Do you feel that because they are, that Mr. Michael can still represent you effectively?

MR. LARSON: I do.

THE COURT: Okay. Are you aware that at some point Arctic Glacier might well decide that statements that you make during possible depositions or other public hearings could lead to your being cut off of indemnification by Arctic Glacier?

MR. LARSON: Yes, I am.

THE COURT: And are you also aware that you might be subject to what's called a clawback where they would say, you know, that you mentioned that you did some things, they were not helpful -- they were inimicable to the corporation, not helpful and we're going to seek to claw back what we've advanced previously?

MR. LARSON: Yes, sir.

THE COURT: Okay. Were there any discussions with your counsel that insofar as Jones Day is representing you in the *Stanford* case, that at some point down the line your interest might be contrary to the interest of Jones Day in the matter and that Jones Day might well throw you overboard?

MR. LARSON: I don't know -- he didn't use those exact terms, but he did explain, I think, in very specific terms that issue.

THE COURT: Okay. So there would be a conflict. We'll use a kinder term. But that if there is a conflict, that Jones Day says that they're going with Arctic Glacier and you'll have to go with someone else like Mr. Michael or any other counsel that you wish to hire. You understand that?

MR. LARSON: I did and I do.

THE COURT: Was there discussion with you and Mr. Michael about the offer, which I guess could be put in quotes, but by the Plaintiffs with regard to giving you absolution from their Complaint insofar as that you would then provide information that they felt would justify absolution and, therefore, might turn you into a witness against the other Defendants in the case?

MR. LARSON: Mr. Michael and I did cover the offer from the Wild Group at length, and he explained to my satisfaction the positives and negatives of that offer.

THE COURT: Okay. Are you satisfied that your interests are satisfactory to you protected after being advised of this information by having Jones Day represent you, then having a separate counsel represent you in that case?

MR. LARSON: I would say, again, currently, at this point I'm satisfied with Jones Day's ability to represent me.

THE COURT: Okay. I guess if the case ends up in trial, we're going to have to redo this again on the question of that, if the Court does permit this continuing representation by Jones Day, because at a trial, you understand, where the same lawyer's representing more than one Defendant, there's a different quantity of proof that might come with regard to each of you individually or Mr. Corbin as well, and it makes it at that point, I would say, not near difficult but impossible for a lawyer to say, well, you know, this someone certainly didn't do anything, maybe the other ones -- but you understand the conflict in that situation at trial?

MR. LARSON: (Nods head).

THE COURT: You have to say yes, sir.

MR. LARSON: Yes.

THE COURT: But at this stage of the game, you are satisfied with having continued representation as it is right now by Jones Day but with the continuing ability -- and that's one thing that I was concerned about, because the agreements

did not talk about that, the ones that you had initially signed during the criminal investigation, but with the continuing ability to consult with Mr. Michael, as necessary, is that --

MR. LARSON: That's correct.

THE COURT: Okay. Then let me talk to Mr. Cooley and Mr. Butler.

MR. LARSON: Thank you.

THE COURT: Good morning.

MR. COOLEY: Good morning.

THE COURT: You've heard what I've said with regard to Mr. Larson and Mr. Michael. You have consulted with Mr. Butler during these proceedings not during -- previous to today, correct?

MR. COOLEY: Yes, Your Honor.

THE COURT: And you've talked about the issue that we're dealing with?

MR. COOLEY: Yes, Your Honor.

THE COURT: And you've consulted with him privately?

MR. COOLEY: Yes, Your Honor.

THE COURT: Are you satisfied, from your standing, that you understand that at some point under the agreements with Arctic Glacier, who is paying Mr. Butler for his representation, that your statements could cause you to lose your reimbursement? You understand that?

MR. COOLEY: Yes, Your Honor.

THE COURT: Would that in any way color your testimony in a case so that -- in other words, you're going to probably be deposed and significant -- and that's under oath, and you're sort of in that situation facing the potential to lose your reimbursement and to even have maybe some of -- clawed back or taken back depending on what you state at your deposition. You understand that?

MR. COOLEY: Yes, I do, Your Honor.

THE COURT: Right now, let me ask Miss Render. You can stay there. If there are depositions in the case, in the *Stanford* case, who will be representing each of the individual Defendants? It appears that it would be your firm?

MS. RENDER: We would expect that to be Jones Day. If any of the individual Defendants had concerns, then we would certainly make their individual counsel available to them, but in a co-conspiracy case, we haven't seen any reason why that would be -- that that would create problems. They face joint and several liability. They all pled guilty to exactly the same conduct. We haven't seen why there would be a problem. I think if there were going to be a problem, we would know about it before they were going to be deposed and bring in their individual counsel.

THE COURT: In addition to you or in place of you?

MS. RENDER: I think we would do whatever the circumstances called for. And if it looked like there was

an -- any time if it looks like there's a conflict of interest developing, we are going to bring in their individual counsel. We are not interested in being conflicted among our clients.

THE COURT: Okay. But that's from your point of view. I guess the question is that I have to look at it from their point of view as individuals before the Court. But your -- Arctic Glacier will continue to pay their legal fees to continuing to consult with their independent counsel as much as needed during all the proceedings in the two cases, the indirect and the *Stanford* case; is that correct?

MS. RENDER: Yes. Absolutely, Your Honor. And the indemnification agreements that Arctic signed with Mr. Cooley and Mr. Larson provides for that, so Arctic Glacier has committed to that. And if there's a time which they feel they can no longer be represented by Jones Day, then I would anticipate immediately having them begin working with their individual counsel or the lawyers they choose at that point.

THE COURT: Right. And the agreements you're pointing to, just so Arctic Glacier's determination, which is why we're -- one of the reasons why we're having the hearing, is because their necessity, from my point of view, of being able to consult with independent counsel, as needed, is critical to the appropriate waiver, the appropriate protection of their right under future proceeding.

MS. RENDER: I think Arctic Glacier agrees with that

point, Your Honor, and certainly so do I. I would refer to tab four --

THE COURT: Okay.

MS. RENDER: Paragraph five.

THE COURT: Okay.

MS. RENDER: Which is in the indemnification agreement for this action with Mr. Cooley and Arctic Glacier --

THE COURT: Right.

MS. RENDER: -- that states that Arctic Glacier recognizes Cooley's continuing rights to retain and consult with independent counsel with regard to his defense at the *Stanford* action. It's anticipated by both parties and I'm -- I'll paraphrase rather than read the whole thing in.

THE COURT: Right.

MS. RENDER: It's anticipated that that will be minimal, but at any time if it's not possible for -- well, let me just go back to the first sentence. Mr. Cooley has a continuing right to retain and consult --

THE COURT: Let's emphasize that.

MS. RENDER: -- his counsel. Sure. I'm sorry --

THE COURT: That it's his call and not your call.

MS. RENDER: It is his call and not my call and not Arctic Glacier's call.

THE COURT: Because the anticipation could well change at any time --

MS. RENDER: Yes, Your Honor.

THE COURT: -- of anticipation of Jones Day's representation. Okay.

MS. RENDER: Yes, Your Honor.

THE COURT: Okay. Let me go back to Mr. Butler and Mr. Cooley.

So you do understand the potential clawback and the potential cease of representation by Jones Day of you, you understand?

MR. COOLEY: Yes.

THE COURT: You understand that in future proceedings, in the two cases that we've been speaking about here, that your statements could well jeopardize your reimbursement potential and the clawback situation? You understand that?

MR. COOLEY: Yes.

THE COURT: But you also understand that at any hearings or depositions you will be under oath and subject to a prosecution for perjury if you false state? You understand that?

MR. COOLEY: Yes, Your Honor.

THE COURT: Do you feel that you would be better represented and more effectively represented by having separate counsel represent you in these upcoming proceedings in *Stanford* and in the indirect purchaser case than having Jones Day represent all three of you?

MR. COOLEY: At this point, Your Honor, I'm comfortable with the representation by Jones Day or independent counsel, either.

THE COURT: Did Mr. Butler go over with you the offer that the Plaintiffs made with regard to the litigation that if you or any one of the three might speak with them and testify to matters or sign an affidavit as to matters that from their point of view might cause them to say we're going to drop you from the case, you were made aware of that by Mr. Butler; is that correct?

MR. COOLEY: Yes, thoroughly with Mr. Butler and his partner, Douglas Grover.

THE COURT: Mr. Grover.

And despite that possibility, you are willing to waive that potential conflict at this stage and have Jones Day represent you; is that correct?

MR. COOLEY: Yes, Your Honor.

THE COURT: And you have the same understanding that Mr. Larson had, that at any point in time as we go through the proceedings, that you can call Mr. Butler or Mr. Grover and talk to them about any matters relating to any of these what we'll call ice cases?

MR. COOLEY: Yes, Your Honor.

THE COURT: You understand that as things continue, you may change your mind, and that also applies to Mr. Larson

as well, and that if at any point you all change your minds, you can notify the Court that you wish to withdraw your approval of Jones Day representing you and shift over to your private counsel. You understand that? Start with Mr. Larson.

MR. LARSON: Yes.

THE COURT: And you understand that?

MR. COOLEY: Yes.

THE COURT: Your discussions with Mr. Butler or Mr. Grover were done without Jones Day counsel in the room.

MR. COOLEY: No, Jones Day was not present.

THE COURT: And then you understand again, as the case continues at trial, there could be a -- what's called a nonconsentable conflict because of the possibility of going through the facts and saying, well, one Defendant may not be involved in any activity that's potential liability, others might have less, and some might have more? You understand that?

MR. COOLEY: I understand.

THE COURT: Okay. Let me just -- so you can have a seat, and what I'm going to do is go side bar with the counsel from the Wild Group and turn on the noise and ask them. We have received from them -- I'm not going to go side bar. We'll do it in court. Are there any other questions that you have submitted, and just point to them by number and page and the Court will consider asking them.

MR. MAX WILD: May we have just a moment, Your Honor?

THE COURT: Okay. While you're consulting, let me just ask Mr. Cooley and then Mr. Larson, starting with Mr. Larson, and you can stay right there. If you'd just stand, that would be helpful. Were you ever told that indemnification would only be available if you used Jones Day in the *Stanford* case?

MR. LARSON: No, I was not.

THE COURT: Okay. Mr. Cooley, were you ever told that indemnification would only be available if you used Jones Day as your counsel in the *Stanford* case?

MR. COOLEY: No, I was not.

THE COURT: So both you -- let me just ask -- understand that you could hire other counsel and still be entitled to indemnification? You understand that, Mr. Cooley?

MR. COOLEY: Yes, Your Honor.

THE COURT: And Mr. Larson?

MR. LARSON: Yes, sir.

THE COURT: I asked that before, but I just wanted to go over that again.

Miss Collon?

(Short pause.)

THE COURT: Let me just ask Mr. Cooley and Mr. Larson one more question.

You understand there's a concept called the

attorney-client privilege where what a client tells their attorney is kept between them. Given the fact that Jones Day is going to be representing four entities in the Corbin case, any statements you make to them are going to be shared among the other clients. You understand that, Mr. Cooley?

MR. COOLEY: Yes, Mr. Butler has made me aware of that.

THE COURT: So you're waiving your attorney-client privilege with regard to those four entities, the three Defendants and Arctic Glacier?

MR. COOLEY: Yes, Your Honor.

THE COURT: And, Mr. Larson, are you aware of that as well? You do have an attorney-client privilege, and that would be waived with regard to Arctic Glacier and the other Defendants in the *Stanford* case.

MR. LARSON: Yes, Mr. Michael explained that to me.

THE COURT: If you want to come to the podium and then just give me the particular page number. They're not paginated. I can count. Up to four.

MR. MATT WILD: Four substantive, and the cc's on page five.

THE COURT: What?

MR. MATT WILD: There are four substantive and cc's on page five. On the bottom of page two, the very last question.

THE COURT: Okay. Let me -- I'll look at that. Give

me the ones that you want, and then I'll take a minute and read them and then decide whether or not to ask them.

MR. MATT WILD: On the -- on page three, the third question from the top --

THE COURT: Okay.

MR. MATT WILD: On page four, the second to last question.

THE COURT: That would be the -- if at some point?

MR. MATT WILD: Yes, Your Honor. And one last question, whether a demand for repayment has ever been made in connection with the advance of defense costs in the criminal case.

THE COURT: Okay.

MR. MATT WILD: Thank you, Your Honor.

THE COURT: Okay. Let me read them over for a minute and then we'll tell you. You have a list of those as well, don't you, Miss Render?

MS. RENDER: We do, Your Honor, thank you, and the individual counsel too as well.

THE COURT: Right.

MR. MATT WILD: Your Honor, just one more?

THE COURT: Sure.

MR. MATT WILD: I apologize.

THE COURT: That's okay. This is your moment.

MR. MATT WILD: Thank you, Your Honor.

And what is the -- your financial ability to repay clawed back attorney's fees, if that were the case.

THE COURT: I'm not getting into that. I'm not putting financials on there.

MR. MATT WILD: Thank you, Your Honor.

THE COURT: With regard to the first question, I think I've dealt with the financials relating to Arctic Glacier, and I'm satisfied with that. That is adequate with regard to the costs at issue in this case.

With regard to the second question asked, let me start with counsel for each individual and then go to each of the two Defendants because this is more of a lawyer question and that would help.

So, Mr. Michael, with regard to the discussion of possibility that a co-defendant might attempt to settle with the Plaintiffs, giving information damaging to your client, is that a scenario that you had discussed with Mr. Larson?

MR. MICHAEL: Judge, perhaps I could break it out.

THE COURT: Okay.

MR. MICHAEL: Because the question, I believe, asks for something that is impermissible under a joint representation because the information that -- under the question would have been learned under that joint representation and, therefore, not disclosable. It would still remain privileged. Having said that, certainly there were

discussions concerning the potential that another Defendant may testify about things that involve Mr. Larson.

THE COURT: Right. I had raised that scenario earlier.

MR. MICHAEL: Correct.

THE COURT: Yeah.

MR. MICHAEL: And that would be true whether that was under a deposition or under a -- some sort of settlement with them, et cetera. And so we certainly discussed the potential that an individual might have information that was damaging to Mr. Larson. I don't believe information that is learned through a joint representation would automatically breach that privilege.

THE COURT: Right. This is a unique situation where joint defense agreements can be done in a situation like this, but we have one law firm. So is there a need, a joint defense agreement in this case?

MS. RENDER: We will certainly have a joint defense agreement, and the common interest principle applies whether there's actually a formal document or not.

THE COURT: Understand that. So we do not have one now. One will be drafted and shown possibly? If one is created, then you would show it to independent counsel as well before their clients sign.

MS. RENDER: If we decide to do a written agreement,

then we would certainly have independent counsel look at them.

THE COURT: Mr. Michael?

MR. MICHAEL: Your Honor, could I speak to Ms. Render for a moment?

THE COURT: Yes.

MR. MICHAEL: Thank you, Judge.

THE COURT: Okay. Very good. Then let me ask Mr. Larson. You heard what Mr. Michael said. He made -- as I indicated in my question to you before, the possibility of a co-defendant might seek to settle and make certain statements that could be damaging to you in this scenario. Nevertheless, you believe that you want to go ahead with representation by Jones Day in this situation and you believe that this is consentable and waivable, I guess?

MR. LARSON: Yes, sir, I do.

THE COURT: Okay. Okay. Let me then ask, Mr. Butler, same question. Did you discuss this matter with Mr. Cooley on the question of attempting -- one of the Defendants attempting to possibly settle, providing information that could be damaging to your client and that you advised him with regard to that?

MR. BUTLER: Your Honor, excuse me, I believe Mr. Michael is correct with his description of the limits of the joint defense privilege or the common interest privilege, but we certainly did discuss the possibility that other

individual Defendants could have things to say about Mr. Cooley that they would testify about.

THE COURT: Okay. And, Mr. Cooley, as Mr. Butler spoke, he did discuss that with you; is that correct?

MR. COOLEY: Yes, Your Honor.

THE COURT: And that you did consent to waive any potential conflict in that scenario?

MR. COOLEY: Yes, Your Honor.

THE COURT: Okay. The last question on page four, I don't think is necessary to ask, appropriate, and so I'm not going to. I think we've covered that with regard to potential conflicts.

Let me then just ask Miss Render, if you wish to speak briefly -- well, forget that. Let me take ten minutes, we'll come back at 12:45 and we'll talk about the Court's feeling -- not -- you don't care about my feelings -- the Court's rulings on the issue, and then we'll move ahead.

MS. RENDER: Your Honor, if I may?

THE COURT: Yes.

MS. RENDER: I did want to just make clear on the record that we have a representative of Arctic Glacier here in the courtroom as well today.

THE COURT: Okay.

MS. RENDER: Mr. Hugh Adams is the corporate secretary of Arctic Glacier.

THE COURT: Okay. And if you'd just stand up so we know who you are.

MR. ADAMS: Good morning, Your Honor.

THE COURT: Then let me just ask Mr. Adams, if you and Miss Render would come to the podium for a minute, as long as you came all the way from Winnipeg, to warm up down here. You, through your corporation, have committed to pay the legal fees of the independent attorneys in this case; is that correct?

MR. ADAMS: That's absolutely correct, Your Honor.

THE COURT: And your corporation does have the funds available to pay the legal fees of the independent counsel; is that correct?

MR. ADAMS: We have had to date, anticipate in the future as well.

THE COURT: Okay. And thus far, you have never requested -- or have you ever requested a clawback or repayment from any of the Defendants, the three individuals in this case, with regard to their legal fees?

MR. ADAMS: No, Your Honor.

THE COURT: Miss Render, do you want to voir dire Mr. Adams with regard to any questions relating to the hearing that we've been going through?

MS. RENDER: I don't have any questions to ask Mr. Adams.

THE COURT: Very good. Thank you.

MS. RENDER: Thank you, Your Honor.

MR. ADAMS: Thank you, Your Honor.

THE COURT: Okay. We'll see you at 12:45.

(Court in recess, 12:35 p.m.)

(Back on the record at 12:52 p.m.)

THE COURT: The Court has before it the issue of disqualification of Jones Day from representing three Defendants in the Corbin case and then also being the counsel for Arctic in the indirect purchaser case. The Court set a hearing having questions, concerns, and I think the hearing certainly proved itself necessary in order for the Court to voir dire the individual Defendants and to get the necessary information on the record.

The Court will, as indicated in its brief order, carry forward with regard to Mr. Corbin at a hearing in Nashville, probably within the next three weeks. I would assume that I would contact Mr. Lustberg. Would he be the one to talk to on that for scheduling a date convenient for his client and then I would set a date and let everyone else know. Is that correct, Miss Render?

MS. RENDER: That is correct, Your Honor.

THE COURT: With regard to the matter before us, the first issue is is there a nonconsentable conflict? The Court finds that neither Jones Day and Dykema's representing of these individual Defendants in the *Stanford* litigation nor their

representation of Arctic Glacier in other pending litigation matters, while at the same time representing these individual Defendants in *Stanford*, that it does not create a nonconsentable conflict under Michigan Professional Rules of Conduct, specifically Rule 1.7. The Court has carefully read the Sixth Circuit opinion in *Centra*, C-e-n-t-r-a, *versus Estrin*, E-s-t-r-i-n, 538 F.3d 402, Sixth Circuit, 2008, which supports the Court's ruling. With regard to -- the Court will issue a more full, short memoranda but more than I just said.

With regard to the informed consent, the Court concludes, after having had the benefit of hearing from two of the Defendants and voir diring them, their counsel, Jones Day's counsel, Arctic Glacier's representative that these individuals have given an informed and knowing consent to their joint representation in the *Stanford* litigation by Jones Day and Dykema, who, as I've indicated before, concurrently represent Arctic Glacier in other pending packaged ice litigation. I think the Defendants are fully aware of the scope and severity of the potential conflicts involving joint representation. The Court's reviewed both the retainer agreements and indemnification agreements with counsel and Defendants, and I believe they have been fully and fairly informed not in the presence of Jones Day but with their own counsel as to the risks involved in this joint representation. They've been given sufficient information about the material risks; that

they continue to have access to the independent counsel as this matter continues and are aware that we are at one stage of the proceeding. As the proceeding continues, there may well be changes in their opinions and either. It doesn't have to be both Defendants or one Defendant. Either of you may well decide that at a certain point they may wish to have independent counsel, and they should notify the Court if they have any concern with regard to that and wish independent counsel, there's a hitch in getting independent counsel as the case continues.

So the Court at this point will not impose extreme -- the extreme sanction of disqualification under these present circumstances. Obviously, if the case goes to trial, then I think we've got a nonconsentable conflict situation, and as the case goes further, we will see what happens. The Court will continue to be on top of this situation. And the Court further rules that Jones Day and Dykema's representation of the individual Defendants does not -- in *Stanford* does not disqualify them from continuing to represent Arctic Glacier in related packaged ice litigation.

I indicated that I'm going to go meet with Mr. Corbin within the next couple weeks. I do want to set matters because this has been sort of like an ice jam, proper term for today, in the *Stanford* litigation and the MDL litigation. With regard to the *Stanford* litigation, I'm going to tentatively set

March 8th as the date for a hearing on Jones Day and Dykema's motion for sanctions and to dismiss on the Rule 11. I say tentative because obviously I have to deal with Mr. Corbin first as to whether his intention under the circumstances after voir diring him and Mr. Lustberg at the hearing in Nashville.

The March 8th date also, assuming that we continue with the -- Corbin and conclude that voir dire with regard to the conflict, the March 8th date is real for the MDL litigation indirect purchaser action, specifically the Reddy Ice, Arctic Glacier, Home City's motions to dismiss the indirect purchaser Complaint. So that will be -- those will be heard on March 8th. The first part tentative, and that would be at 2:00, and the second part is permanent, the fixed, at 3:30 on March 8th.

Anything further from any of the parties here? Let me start with the Plaintiffs' counsel. I recognize that this has been the Court's hearing. Anything further with regard to the matter that I just stated?

MR. MATT WILD: No, Your Honor. Thank you, Your Honor.

THE COURT: Thank you. Anything further -- with regard to the Rule 11 matter, I'm going to hold that in abeyance and we'll continue on.

Anything further from defense counsel from Jones Day with regard to the matters that I spoke about?

MS. RENDER: Nothing further, Your Honor.

THE COURT: Okay. Anything further from counsel for the individual Defendants?

MR. MICHAEL: No, Judge. Thank you for your time.

MR. BUTLER: No, Your Honor.

THE COURT: Okay. Then we are concluded. Thank you all.

(Proceedings concluded, 1:00 p.m.)

- - -

CERTIFICATION OF REPORTER

I, Leann S. Lizza, do hereby certify that the above-entitled matter was taken before me at the time and place hereinbefore set forth; that the proceedings were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party, nor interested in the event of this cause.

S/Leann S. Lizza 2-4-11

Leann S. Lizza, CSR-3746, RPR, CRR, RMR Date

Exhibit 17

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

IN RE PACKAGED ICE ANTITRUST LITIGATION,	Case No. 2:10-cv-11689-JF-RSW Case No. 08-MD-01952
	The Honorable Paul D. Borman
THIS DOCUMENT RELATES TO *Stanford v. Corbin et al.* ALL INDIRECT PURCHASER ACTIONS	

OPPOSITION TO STANFORD'S MOTION TO DISQUALIFY JONES DAY AND DYKEMA GOSSETT

Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc. (collectively, the "Arctic Glacier entities"), and Defendants Keith E. Corbin, Frank G. Larson, and Gary D. Cooley (collectively, the "Individuals"), through counsel, hereby oppose Plaintiff's motion to disqualify Jones Day and Dykema Gossett ("Dykema") from representing the Individuals in the matter of *Stanford v. Corbin et al.* (Case No. 2:10-cv-11689-JF-RSW) and from representing the Arctic Glacier entities in the indirect purchaser cases currently consolidated for the purpose of pretrial proceedings as *In re Packaged Ice Antitrust Litigation*, MDL No. 1952 (Case No. 08-md-1952) in this District before this Court (the "MDL"). In support of this Opposition, the Individuals and the Arctic Glacier entities state as follows:

1. Motions to disqualify opposing counsel are generally disfavored, particularly because they are often used by counsel as a tactical ploy. Plaintiff's motion illustrates this problem. Plaintiff seeks to disqualify Jones Day and Dykema because the Individuals would not acquiesce to Plaintiff's unfavorable settlement terms and because, from a negotiating standpoint,

Plaintiff would prefer that the Individuals be forced to bear their own defense costs. Neither ground is a proper basis to seek disqualification.

2. There is no conflict here. Plaintiff suggests that there is a *possible* conflict, but this Circuit's law makes clear that only *actual* conflicts are actionable. In any event, there are no potential conflicts among the Individuals with regard to Plaintiff's "immunity" proposal. Each of them knowingly rejected the proposal after consultation with separate counsel, not Jones Day or Dykema. The Individuals' interests are materially aligned, and there is no evidence of a conflict of interest. Similarly, Arctic Glacier Inc.'s payment of the Individuals' legal fees in this case in no way creates a conflict of interest. Indemnification is lawful under the professional rules and applicable business corporations law. Nor does indemnification of the Individuals by Arctic Glacier Inc. violate Arctic Glacier International Inc.'s probation or create any negative inference regarding the truthfulness of the Individuals or any of the Arctic Glacier entities.

3. Furthermore, each of the Individuals consented to Jones Day and Dykema's joint representation of them and the Arctic Glacier entities after full disclosure of the relevant issues, including the possibility of a conflict arising down the road, and after each of them consulted with his own separate counsel, not Jones Day or Dykema. Their informed and advised consent cures any possible conflict of interest.

4. Finally, not only has Plaintiff failed to show that any conflict exists, but disqualification of Jones Day and Dykema would be inappropriate given the significant prejudice to the Individuals and the Arctic Glacier entities that would result from disqualification of the Individuals and Arctic Glacier's chosen counsel.

5. In short, Plaintiff has presented no evidence that an actual conflict exists. The Individuals have demonstrated that they were fully advised regarding both Plaintiff's proposal and the joint representation by Jones Day. The Arctic Glacier entities and the Individuals further submit that no further discovery or evidentiary hearing is necessary.

Dated: August 16, 2010

Respectfully submitted,

/s/ Paula W. Render

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

IN RE PACKAGED ICE ANTITRUST LITIGATION, THIS DOCUMENT RELATES TO *Stanford v. Corbin et al.* ALL INDIRECT PURCHASER ACTIONS	Case No. 2:10-cv-11689-JF-RSW Case No. 08-MD-01952 The Honorable Paul D. Borman

BRIEF IN OPPOSITION TO STANFORD'S MOTION TO DISQUALIFY JONES DAY AND DYKEMA GOSSETT

ISSUES PRESENTED

1. Whether disqualification of the Individuals' chosen counsel is appropriate where only the *possibility* of a conflict, as opposed to an actual conflict, exists?

2. Whether a conflict of interest exists where each Individual was informed of and knowingly rejected Plaintiff's purported offer of "immunity" in exchange for the defendant's testimony to be used against his co-defendants or other defendants in separate pending actions?

3. Whether a conflict of interest exists where all Defendants' interests are materially aligned?

4. Whether payment of the Individuals' legal fees by Arctic Glacier Inc. creates a conflict of interest where each Individual consented after consultation?

5. Whether Arctic Glacier Inc.'s indemnification of the Individuals, where such indemnification is mandated by Arctic Glacier Inc.'s bylaws, is permissible under governing law?

6. Whether Arctic Glacier Inc.'s indemnification of the Individuals could violate Arctic Glacier International Inc.'s (a wholly separate and distinct company) probation?

7. Whether Arctic Glacier Inc.'s payment of the Individuals' legal fees, without more, creates an inference that it is trying to "suborn perjury or obstruct justice?"

8. Whether an actionable conflict of interest exists where each client knowingly consented to joint representation after consultation?

9. Whether counsel's continued representation of the Individual and the Arctic Glacier entities will so undermine the integrity and fairness of the proceedings that Defendants should be deprived of counsel of their choosing?

STATEMENT OF CONTROLLING AUTHORITY

Del. Code. Ann. tit. 8, § 145 b

ABA Model Rules of Professional Conduct, Rule 1.7, comment 28

Michigan Rules of Professional Conduct, Rules 1.6 and 1.7 (and comment)

Bennett v. Bennett Envtl., Inc. (2009), 94 O.R. (3d) 481, 484 (C.A.)

Blair v. Consol. Enfield Corp. [1995] 4 S.C.R. 5, 23.

CenTra, Inc. v. Estrin, 639 F. Supp. 2d 790 (E.D. Mich. 2009)

Clay v. Doherty, 608 F. Supp. 295, 303-305 (N.D. Ill. 1985)

Employers Mut. Cas. Co. v. Al-Mashadi, No. 08-cv-15276, 2009 WL 2711963 (E.D. Mich. Aug. 24, 2009)

Maiss v. Bally Gaming Int'l, Inc., No. 96-0008, 1996 WL 732530 (E.D. La. Dec. 12, 1996)

MJK Family LLC v. Corporate Eagle Mgmt. Servs., Inc., 676 F. Supp. 2d 584 (E.D. Mich. 2009)

Shaw v. London Carrier, Inc., No. 1:08-cv-401, 2009 WL 4261168, at *3 (W.D. Mich. Nov. 24, 2009)

Sherrod v. Berry, 589 F. Supp. 433 (N.D. Ill. 1984)

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INTRODUCTION

Plaintiff's motion to disqualify – like the entire *Stanford* lawsuit – is a tactical ploy seeking an unfair advantage in the MDL, which involves different defendants than *Stanford*. Plaintiff seeks to disqualify Jones Day and Dykema because the Individuals in the *Stanford* action would not acquiesce to Plaintiff's illusory settlement offer and because, from a negotiating standpoint, Plaintiff would prefer that the Individuals be forced to bear their own defense costs. Neither ground is a proper basis to seek disqualification of counsel.

After filing the *Stanford* lawsuit asserting a single state law claim against the Individuals, three people of modest means, Plaintiff's counsel immediately offered to "settle" with the Individuals so long as they provided "truthful" information (as determined by Plaintiff alone) regarding the actions of the Individuals' former employer, Arctic Glacier International Inc. ("Arctic Glacier"), and the other corporate defendants in the separate MDL action brought by Plaintiff.[1] Plaintiff's motion assumes: (a) that the Individuals have information that will help Plaintiff in his pursuit against the Arctic Glacier entities and the other corporate defendants; (b) that the Arctic Glacier entities are endeavoring to hide this information; and (c) that the Individuals, the Arctic Glacier entities, and their counsel will perjure themselves and defy all ethical norms to keep the information from coming to light. These assumptions are unfounded.

Jones Day and Dykema take their ethical and legal responsibilities seriously, and have ensured that the Individuals sought advice from their separate counsel before consenting to this

[1] There are three Arctic Glacier entities relevant to these proceedings: Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc. For ease of reference, these three entities will collectively be referred to as the "Arctic Glacier entities." Arctic Glacier International Inc., the United States subsidiary of Arctic Glacier Inc. (a Canadian corporation) will be referred to herein as "Arctic Glacier." Where the distinction between the entities is significant, each will be referred to by its full corporate title.

representation. Furthermore, Jones Day and Dykema insisted that the Individuals consult with their separate counsel before deciding to reject Plaintiff's lopsided settlement "offer." Plaintiff's motion is based on speculation and, as a legal matter, fails to show that any actual conflict of interest exists, let alone one that mandates the disqualification of Jones Day and Dykema. Plaintiff's Motion To Disqualify Jones Day and Dykema ("DQ Motion") must be denied.

STATEMENT OF FACTS

In March 2008, the Department of Justice ("DOJ") announced that it was investigating possible anticompetitive practices in the packaged ice industry. In response, dozens of complaints were filed against the corporate entities that were the subjects of the DOJ's investigation, including the Arctic Glacier entities. These cases have been consolidated for the purpose of pretrial proceedings and are before this Court (the "MDL").

In connection with the DOJ's investigation, Keith Corbin, Frank Larson, and Gary Cooley (the "Individuals"), all former employees of Arctic Glacier, and Arctic Glacier each separately pled guilty to a conspiracy to allocate customers in violation of the antitrust laws in southeastern Michigan. On April 26, 2010, over 22 months after filing his complaint against the Arctic Glacier entities, Reddy Ice Holdings Inc. and Home City Ice Co. (collectively, "the Corporate Defendants"), Plaintiff filed this separate case against the Individuals. The Complaint alleged no facts relating to the Individuals' conduct, but instead merely cited to the Individuals' and Arctic Glacier's guilty pleas, and reiterated unproven allegations in a related case, *McNulty v. Reddy Ice Holdings, Inc., et al*, Case No. 08-cv-13178. Stanford's counsel, Matthew and Max Wild, are also Interim Class Counsel for the indirect purchasers in the MDL.[2]

[2] Interim Class Counsel also attempted to intervene on behalf of the indirect purchasers in Arctic Glacier's criminal proceedings in the Southern District of Ohio.

After the Complaint was served on the Individuals, they each separately retained Jones Day and Dykema to represent their respective interests in *Stanford*. Ex. 1: Declaration of Paula W. Render ("Render Decl."), ¶ 4. Jones Day and Dykema also represent the Arctic Glacier entities in the MDL, and Jones Day represented Arctic Glacier in its criminal proceedings in the Southern District of Ohio. For the criminal proceedings, however, the Individuals retained their own, separate counsel. Mr. Larson retained William Michael Jr. of Dorsey & Whitney; Mr. Corbin retained Lawrence Lustberg of Gibbons P.C.; and Mr. Cooley retained Stephen Butler and Douglas Grover of Thompson Hine (collectively, "Separate Counsel"). The Individuals continue to consult with their Separate Counsel as they choose in connection with the matters in the pending MDL. Ex. 2: Michael Decl. ¶ 5; Ex. 3: Lustberg Decl. ¶ 6; Ex. 4: Butler Decl. ¶ 8.

Prior to undertaking representation of the Individuals in *Stanford*, counsel conducted an analysis of the facts and issues present in both *Stanford* and the MDL. Render Decl. ¶ 5. In the exercise of counsel's professional judgment and discretion, it was concluded that the interests of all defendants were fully aligned and that no actual conflict of interest existed as a result of counsel's concurrent representation of these parties. *Id.* Counsel also concluded that their representation of the respective defendants would not adversely affect the relationship either firm had with any other defendant. *Id.*

Furthermore, counsel provided a letter of engagement to the Individuals and the Arctic Glacier entities that explained the nature of the representation as among the Individuals in *Stanford*, as well as counsel's continued representation of the Arctic Glacier entities in the related MDL. *Id.* at ¶ 6. Jones Day explained as follows (quoting the letter to Larson as an example):

> As you know, Jones Day currently represents Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International, Inc. (collectively, "Arctic Glacier" or "the Company") in connection with multiple lawsuits and governmental investigations relating to Arctic Glacier's alleged criminal and civil violations of state and federal antitrust laws through agreements among packaged ice manufacturers to restrain competition with respect to certain customers and certain geographic regions . . . .
>
> While we do not perceive any problem acting as counsel for both Arctic Glacier in connection with the aforementioned matters and you, Keith Corbin, and Gary Cooley in connection with the *Stanford* lawsuit, and while the objectives and strategies of the parties appear consistent, it is always possible that acting as joint counsel could result in potential or actual conflicts of interest. One way in which a conflict of interest could occur is if we receive conflicting instructions from the parties. Another way in which a conflict of interest could arise is if in the course of this representation, the parties develop inconsistent objectives or strategies. At this time, we are not aware of and there does not appear to be an actual conflict of interest between you and Keith Corbin, Gary Cooley, or Arctic Glacier. It is always possible, however, that a conflict will arise which would require us to withdraw from representing you, and we reserve the right, in our sole discretion, to determine that such a conflict exists and to withdraw from our representation of you.

Id. Jones Day sent the engagement letters to Separate Counsel and asked them to discuss the letters with their clients. *Id.* at ¶ 9; Michael Decl. ¶ 4; Lustberg Decl. ¶ 5; Butler Decl. ¶ 7. Separate Counsel informed counsel that each client consented to the dual representation. *Id.*

On May 12, 2010, Jones Day's Paula Render called Matthew Wild and left a message informing him that Jones Day represented the Individuals in *Stanford*. Render Decl. ¶ 10. On May 13, Max Wild sent Ms. Render a letter via email, stating his belief that Jones Day's representation of the Individuals "is improper for several reasons," including that "Plaintiffs [*sic*] intend to offer one or more of the Individuals 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 Individuals." *Id* at ¶ 10, Ex. A. The letter further asserted that

this so-called offer of "immunity" created a conflict of interest and that it was "Jones Day's duty immediately to advise all of the defendants" of this so-called offer and to advise them to get separate counsel. Max Wild also asserted that it was "unlawful" for Arctic Glacier to indemnify the Individuals. *Id.*

On May 14, 2010, Ms. Render forwarded Max Wild's May 13, 2010 letter to Separate Counsel. Ms. Render told Separate Counsel that Max Wild had represented his proposal as a "settlement" offer, and asked Separate Counsel to provide the letter to the Individuals and to let her know if any of the Individuals were interested in discussing it further. Render Decl. ¶ 11; Michael Decl. ¶ 6; Lustberg Decl. ¶ 7; Butler Decl. ¶¶ 9-10. Melissa Hirst, another Jones Day attorney, had a similar conversation with Matthew Wild on May 17, and Ms. Render exchanged emails with Max Wild along the same lines later that day. Render Decl. ¶¶ 12-13, Exs. B, C.

Matthew Wild then elaborated upon the proposal in an email on May 18, 2010. This email made a number of demands and characterized his proposal as a "queen for a day" cooperation proffer similar to those "made by federal prosecutors to prospective targets for immunity." The email also stated: "If the individual has provided false information or, after agreement 'immunizing' him, ceases to cooperate, plaintiff may reinstate the action against him, all of the information provided in the proffer and its fruits may be used against him, and any statute of limitations defense shall be valid only as to the date of commencement of this action." In other words, Part 2(d) of this offer made the Wilds the sole arbiters of whether an Individual had provided truthful information and sufficient cooperation; if the Wilds judged otherwise, all information in the so-called "proffer" could then be used against the "immunized" individual and any other defendant. Render Decl. ¶ 14, Ex. D. Neither this email, nor any other

correspondence, described the nature of the cooperation sought from the Individuals in this case where, according to Plaintiff's DQ Motion, the Individuals have already pled guilty to the only conduct alleged in this case. *Id.* Ms. Render responded to the May 18 email and forwarded Max Wild's May 18 email to each of the Separate Counsel on May 19. By May 24, each of the Separate Counsel had confirmed to Ms. Render that the Individual they represent was not interested in pursuing Plaintiff's offer. Render Decl. ¶ 16, Ex. E; Michael Decl. ¶¶ 8-9; Lustberg Decl. ¶¶ 8-10; Butler Decl. ¶¶ 11-12.

During the week of May 24, Max Wild, Ms. Render, and Howard Iwrey of Dykema held a telephonic meet-and-confer regarding Plaintiff's intended motion to disqualify. Mr. Wild explained that he did not think it was possible for Jones Day or Dykema to explore the pros and cons of Plaintiff's offer with each Individual while also representing Arctic Glacier. Ms. Render told Mr. Wild that she had forwarded Plaintiff's communications containing his proposal to their Separate Counsel and left all discussion of the proposal to Separate Counsel and the Individuals. Ms. Render gave Max Wild contact information for each of the Separate Counsel during the call. Max Wild stated that he would discuss this information with his co-counsel to decide whether they would proceed with their motion to disqualify. Render Decl. ¶ 17.

David Axelrod is not counsel of record in this case, but apparently is working with the Wilds in representing the indirect purchasers. (Mr. Axelrod argued for the indirect purchasers in opposing the entry of Arctic Glacier's plea. *See supra* n.2.) Mr. Axelrod called Frank Larson's Separate Counsel, Bill Michael, and told Mr. Michael that the Indirect Purchasers' counsel wanted to discuss "immunity" with Mr. Larson that would extend to cases other than *Stanford.* Mr. Michael observed that Mr. Axelrod was not counsel of record for Plaintiffs in either case and

that he did not see any reason to continue the conversation.[3] Contrary to Plaintiff's assertion that the Individuals' Separate Counsel "refused to discuss it with Plaintiff's counsel" (DQ Motion at 4), Mr. Axelrod acknowledges that he did not contact Separate Counsel for Gary Cooley. Axelrod Decl. ¶ 4 to DQ Motion; Michael Decl. ¶ 10.

ARGUMENT

I. MOTIONS FOR DISQUALIFICATION ARE DISFAVORED, AS PARTIES OFTEN IMPROPERLY USE THEM FOR TACTICAL ADVANTAGE.

Disqualification motions are generally disfavored because they are often "misused as a technique of harassment" rather than to further the legitimate purposes of the ethical rules, and because a litigant should, as much as possible, be able to use the counsel of his choice. Cmt. to Mich. Rules of Prof. Conduct ("MRPC") Rule 1.7; *MJK Family LLC v. Corporate Eagle Mgmt Servs., Inc.*, 676 F. Supp. 2d 584, 592 (E.D. Mich. 2009) ("Because the ability to deny one's opponent the services of capable counsel is a potent weapon, courts must be vigilant in reviewing disqualification motions."); *DeBiasi v. Charter County of Wayne,* 284 F. Supp. 2d 760, 770 (E.D. Mich. 2003) (disqualification is an "extreme sanction").

Accordingly, parties seeking to disqualify an opponent's counsel bear a heavy burden of proof to show that disqualification is warranted. *Evans v. Artek Sys. Corp.*, 715 F.2d 788, 791 (2d Cir. 1983). The movant bears the burden of proving both (1) "that some specifically identifiable impropriety ***actually occurred***"; and (2) that "the public interest in requiring

[3] This was not the first time that Interim Class Counsel attempted to extract an unfair settlement from the Individuals. Prior to the sentencing hearings of the Individuals, Mr. Axelrod approached Separate Counsel and offered to take it easy on the Individuals during their sentencing hearings if they agreed to provide information about Arctic Glacier. None of the individuals pursued this offer; they allocuted fully at their sentencing hearings and Judge Weber of the Southern District of Ohio accepted their pleas. Michael Decl. ¶ 11; Lustberg Decl. ¶ 11.

professional conduct by an attorney outweighs the competing interest of allowing a party to retain the counsel of his or her choice." *Employers Mutual Cas. Co. v. Al-Mashhadi*, No. 08-cv-15276, 2009 WL 2711963, at *10 (E.D. Mich. Aug. 24, 2009) (emphasis added). As explained below, Plaintiff does not come close to meeting this exacting burden. He fails to show that any improper conduct "actually occurred," much less conduct so extreme that the fairness of the proceedings would be undermined by joint representation. *See id.*

That this is a purely tactical motion is evidenced by Plaintiff's own statements. *Stanford* asserts a single claim under Michigan's Antitrust Reform Act ("MARA") "to recover damages solely for the crimes to which the Individuals pleaded guilty"(although, as discussed below, the Complaint is not actually so limited). DQ Motion ¶ 2. Yet, in describing the intent behind his complaint, Plaintiff states that his "counsel was confident that the Individuals would be able to offer evidence establishing a conspiracy beyond Michigan" – even though, according to his DQ Motion, *this* case is only about the conduct occurring in Michigan. DQ Motion at 3. This admission makes clear that Plaintiff filed *Stanford* only to exert pressure on the Individuals to provide information on the Corporate Defendants for use in the MDL, where a nationwide conspiracy is alleged. *See also* Defs.' Rule 11 Mot. to Dismiss/For Sanctions (Dkt. 19.) This motion is just another attempt to pressure the Individuals into an unfair settlement.

II. NO ACTUAL CONCURRENT CONFLICT OF INTEREST EXISTS HERE.

There is no actual concurrent conflict of interest here, either among the Individuals or between the Individuals and the Arctic Glacier entities, as shown below.

A. Plaintiff's Disqualification Motion Is Premised On What Plaintiff Believes Is A "Possible" Conflict Of Interest; That Is Not Enough.

As evidenced by his "Issues Presented," Plaintiff's DQ Motion is premised on what he perceives to be a "possible" conflict of interest:

> 1. Is there a conflict of interest between and among the individual defendants due to *the possibility* that one or more of them may provide information to be used against his co-defendants or may testify against them?
>
> 2. Is there a conflict of interest between the individual defendants and Arctic Glacier due to *the possibility* that one or more of them may provide information to be used against Arctic Glacier or testify against it?

DQ Motion at i (emphases added); *see also id.* at 10 (asserting counsel's belief that there is a "*possibility*" that one or more of the Individuals would turn on the others) (emphasis added).

The mere possibility of a conflict under the MRPC does not preclude representation. Multiple representation is only impermissible in cases where there is an actual divergence of interest. Thus, an attorney may be disqualified only when "some specifically identifiable impropriety *actually occurred*." *Employers Mutual Cas. Co.*, 2009 WL 2711963, at *10 (emphasis added). Indeed, "[t]here is always the *potential* for conflict in multiple representation cases. Without more, however, that potential is insufficient to compel withdrawal or disqualification." *Clay v. Doherty*, 608 F. Supp. 295, 303 (N.D. Ill. 1985) (recognized by the Sixth Circuit in *Gordon v. Norman*, 788 F.2d 1194, 1198 (6th Cir. 1986).

Joint representation is common and permissible. *Id.* at 303. And, while "[n]early every case, criminal or civil, which involves more than one defendant presents the opportunity to each defendant to attempt to exculpate himself from liability or guilt by blaming any wrongdoing on the other defendant," this possibility does not preclude joint representation. *Id.* ("even where this possibility is especially apparent because of the differing circumstances of the defendants' involvement, courts have not necessarily held joint representation improper").

As in any case of joint representation, there is a possibility here that a future conflict may arise. This mere possibility does not require disqualification. Plaintiff provides *nothing* to show that a conflict "actually occurred" – because none occurred. *Employers Mutual Cas. Co.*, 2009 WL 2711963, at *10.

B. Plaintiff's Conjecture Does Not Amount To Even A "Possible" Conflict Here, As The Individuals Were Informed Of – And Rejected – Plaintiff's Offer.

Plaintiff claims that a possible conflict of interest exists because Jones Day and Dykema allegedly "cannot be expected to consider carefully and recommend objectively" the so-called immunity offer delivered by Plaintiff. DQ Motion at 11. This claim ignores the fact that each Individual rejected Plaintiff's "offer" after discussion with Separate Counsel.

Specifically, Paula Render of Jones Day sent the May 13, 2010 letter and May 18, 2010 email describing Plaintiff's proposal to each of the Individual's Separate Counsel and asked that they discuss both with their clients. Render Decl. ¶¶ 11, 16. After doing so, each of the Separate Counsel informed Ms. Render that the Individual he represents was not interested in pursuing the proposal. Michael Decl. ¶ 9; Lustberg Decl. ¶ 10; Butler Decl. ¶ 12.[4] Thus, Plaintiff's claims of potential conflict fail. *Cf. Clay*, 608 F. Supp. at 303 ("[H]ypothetical conflicts in the mind of an opposing party will not justify so drastic a measure as disqualification.").

C. Each Of Defendants' Interests Are Materially Aligned In Any Event.

At present, each of the Individuals and the Arctic Glacier entities' interests in defending against the claims present in both *Stanford* and the MDL are unequivocally aligned. While the Individuals and Arctic Glacier International Inc. have pled guilty to a violation of the antitrust

[4] Plaintiff's motion ignores the fact that Ms. Render told Max Wild on May 26, 2010, that the Individuals were informed of the immunity offer by Separate Counsel. Render Decl. ¶ 17.

laws in southeastern Michigan, each defendant has common interests in defending these actions, which weighs against a finding of a conflict of interest. *See Sherrod v. Berry*, 589 F. Supp. 433, 437-38 (N.D. Ill. 1984) (denying plaintiff's motion to disqualify one firm's representation of multiple defendants because defendants asserted a common defense).

D. Payment of the Individuals' Legal Fees By Arctic Glacier Inc. Does Not Create A Conflict of Interest.

Contrary to Plaintiff's assertions, the professional rules and the applicable law permit Arctic Glacier Inc., the Canadian parent company, to pay the Individuals' legal fees.

1. The Professional Rules Permit Indemnification.

"A lawyer 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. Even where "a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees if the clients consent after consultation and the arrangement ensures the lawyer's professional independence." *Id.*

Here, each client has consented, after consultation, to Arctic Glacier Inc. paying their respective legal fees. Render Decl. ¶¶ 7-9. Plaintiff offers no support for the notion that counsel's professional independence has been compromised by the dual representation, except to assert incorrectly that Arctic Glacier's interests are "adverse" to those of the Individuals. As explained above, however, Arctic Glacier's and the Individuals' interests are materially aligned. No conflict of interest arises from Arctic Glacier Inc.'s payment of the Individuals' legal fees.[5]

[5] Plaintiff's cases on this point, *United States v. Locascio*, 6 F.3d 924 (2d Cir. 1993) and *United States v. Fulton*, 5 F.3d 605 (2d Cir. 1993), are inapposite. Each addresses the payment of

2. The Applicable Law Permits Indemnification.

Arctic Glacier Inc. is the company that has agreed to indemnify the individuals. It is a Canadian corporation, organized under the laws of the province of Alberta. Render Decl. ¶ 19, Ex. F. Each of the Individuals is a former officer of Arctic Glacier Inc. According to Arctic Glacier Inc.'s bylaws, 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 Decl. ¶ 19, Ex. F (AGI Bylaws § 6.03) (emphasis added). Thus, Arctic Glacier Inc. is required to indemnify a former officer for acts undertaken in the course of his employment at the company if the stated conditions are satisfied.[6] The bylaws also require indemnification where the Business Corporations Act of Alberta "permits or requires" such indemnification. *Id.* (emphasis added).

Plaintiff, however, asserts that this indemnification is prohibited because the Individuals have pled guilty to conduct that Plaintiff asserts is the same conduct alleged in Plaintiff's complaint, and (according to Plaintiff) Delaware law does not permit indemnification in such circumstances. As a factual matter, that claim is wrong. Plaintiff's class includes "All persons . . . who purchased packaged ice indirectly in Michigan." Dkt. 1 ¶ 15; *see also id.* at ¶ 19(a). The

(continued...)

legal fees by one client where – unlike here – that client's interests were directly adverse to the client benefiting from the payment.

[6] Mr. Cooley, who was not fined in connection with his sentence, is not subject to the "reasonable belief" of legality requirement because it applies only in a "criminal . . . proceeding that is enforced by a monetary penalty." Render Decl. ¶ 19, Ex. F (AGI Bylaws § 6.03); *see also* Business Corporations Act of Alberta § 1.24(1)(b) (providing the same language).

Individuals, however, pled guilty only to conduct in southeastern Michigan.[7] Thus, Plaintiff alleges conduct for which the Individuals were not charged or convicted.

Plaintiff is also wrong as a matter of law. First, he purports to rely on Delaware law, but because Arctic Glacier Inc. is organized under the laws of Alberta, Canada, Delaware law does not apply to Arctic Glacier Inc., a Canadian company. Second, under both Delaware and Canadian law, Arctic Glacier Inc.'s indemnification of the Individuals is lawful. This is self-evident in Delaware from the excerpt of the Code quoted in Plaintiff's DQ Motion on page 13: "The termination of any action . . . by judgment, order, settlement, **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** . . . ." Del. Code. Ann. tit. 8, § 145 b (emphasis added) ("Section 145"). Section 145 thus expressly prohibits courts from doing exactly what the Plaintiff asks this Court to do – presume bad faith and a bar on indemnification based on no more than the fact that criminal proceedings resulted convictions.

The decisions construing Delaware law have upheld this prohibition on the presumption Plaintiff seeks. *See, e.g., Maiss v. Bally Gaming Int'l, Inc.*, No. 96-0008, 1996 WL 732530, at *1 (E.D. La. Dec. 12, 1996) (holding that, under Delaware law, the "fact that [plaintiff] was convicted of misprision of a felony does not determine his entitlement to indemnification under the undisputed facts present in this matter"). To hold otherwise would *discourage* settlements of

[7] *See* Plea Agreement of Keith Corbin ¶ 2, *United Stated v. Corbin*, 1:09CR0146 (S.D. Ohio, filed Oct. 5, 2009); Plea Agreement of Frank Larson ¶ 2, *United Stated v. Larson*, 1:09CR0147 (S.D. Ohio, filed Oct. 5, 2009); Plea Agreement of Gary Cooley ¶ 2, *United Stated v. Cooley*, 1:09CR0148 (S.D. Ohio, filed Oct. 5, 2009).

criminal proceedings before trial and *discourage* indemnification – both of which violate public policy. *Am. Soc'y for Testing & Materials v. Corrpro Cos.*, 478 F.3d 557, 576 (3d Cir. 2007).

But that is Delaware law. The applicable law here is Canadian law, which is similar. Canadian law presumes that directors and officers have acted in good faith. *Blair v. Consol. Enfield Corp.* [1995] 4 S.C.R. 5, 23 ("persons are assumed to act in good faith unless proven otherwise") (included in Ex. 5). This presumption is not overcome even where a former director admits a violation of law. *Bennett v. Bennett Envtl., Inc.* (2009), 94 O.R. (3d) 481, 484 (C.A.) (included in Ex. 5). In *Bennett*, the court required the corporation to indemnify its former director even though he admitted to "serious misconduct" contrary to the securities laws "and the public interest." *Id.* The court stated that "persons should also be assumed to believe that they are acting lawfully and to have reasonable grounds for that belief, unless the contrary is proven," *id.* at 490, and required indemnification despite the admission to serious misconduct. Thus, despite Plaintiff's claims, neither a criminal conviction nor a guilty plea proves "bad faith" or that an individual lacked "reasonable grounds for believing his conduct was lawful."

None of Plaintiff's cases support his assertions that indemnification is unavailable here. None addresses Canadian law. Instead, Plaintiff purports to rely on several Delaware cases, and if Delaware law applied here, those cases would nevertheless provide Plaintiff no support. *Stockman v. Heartland Indus. Partners, L.P.*, No. CIV.A. 4227-VCS, 2009 WL 2096213, at *10 (Del. Ch. July 14, 2009), cited on page 14 of the DQ Motion, discusses whether corporate indemnitees have an "absolute right to mandatory indemnification" in criminal proceedings in the absence of a conviction. *Id.* at *10. The question here, on the other hand, is whether indemnification is permissible in a civil case. *James Cape & Sons Co. ex rel. Polsky v. Streu*

Constr. Co., 775 N.W.2d 117 (Wis. 2009), simply addresses whether an insurer's insurance policy gave rise to a duty to defend individuals in a case for civil damages arising out of criminal convictions. The court resolved this question as a matter of contract law. *Id.* at 120. *In re Landmark Land Co. of Carolina, Inc.*, 76 F.3d 553 (4th Cir. 1996), addressed an issue in a bankruptcy proceeding in which it was established that bank officers committed to the Office of Thrift Supervision not to enter into any material transaction for a certain period, but during that period filed for bankruptcy. These established facts showed bad faith, barring indemnification. *Id.* at 558, 565. The court did not, however, apply a presumption that a conviction shows bad faith and bars indemnification. None of these Delaware cases supports ignoring the express language of Section 145 to apply a presumption that a conviction bars indemnification.

3. Indemnification Does Not Violate Arctic Glacier's Probation.

As stated above, Arctic Glacier Inc. has indemnified the Individuals; Arctic Glacier International Inc. (referred to herein as "Arctic Glacier") pled guilty to a violation of the Sherman Act and is on probation. Plaintiff attempts to conflate the two disparate companies and – without the support of evidence or legal authority – argues that Arctic Glacier Inc.'s indemnification of the Individuals constitutes "waste" of Arctic Glacier's assets under its probation agreement. Like the others Plaintiff has offered, this argument is entirely misplaced.

Plaintiff does not explain how the Canadian parent's actions could "waste" the U.S. subsidiary's assets. Plaintiff also ignores the possibility that Arctic Glacier could be held liable for some portion of a judgment against one of the Individuals, under the theory of joint and several liability or contribution. Thus, by indemnifying the Individuals up front (thereby ensuring that they have an adequate defense), Arctic Glacier Inc. reduces the possibility of Arctic

Glacier being found liable in a civil suit and, ultimately, reduces its own potential liability. Under these circumstances, the decision of Arctic Glacier's parent company to indemnify the Individuals cannot be described as "waste" of any corporate asset, even if the distinctions between the two companies were ignored.

4. Payment of the Individuals' Legal Fees Does Not Create Any Inference of Wrongdoing by the Individuals.

Similarly, that Arctic Glacier Inc. is paying the Individuals' legal fees in this suit does ***not*** raise an evidentiary inference that Arctic Glacier is attempting to "suborn perjury or obstruct justice," as Plaintiff wrongly suggests.[8] DQ Motion at 12. First, Arctic Glacier Inc.'s bylaws mandate indemnification of its former officers for actions undertaken in the course of their employment. Second, in support of his DQ Motion, Plaintiff cites cases where indemnification from an unknown source could not be explained in a way that did not demonstrate an effort to obstruct justice. *See In re Grand Jury Proceedings No. 92-4*, 42 F.3d 876, 879 (4th Cir. 1994) (grand jury subpoena for fee records relating to private counsel suddenly hired by two indigent defendants was proper because it might lead to the discovery of information that would identify previously unknown co-conspirators). Here, Plaintiff has presented no evidence to support his speculation that Arctic Glacier has, is, or will attempt to suborn perjury or obstruct justice.

III. IN ANY EVENT, EACH CLIENT CONSENTED TO JOINT REPRESENTATION AFTER A FULL DISCLOSURE.

[8] Plaintiff also argues that disqualification is appropriate because Plaintiff's investigation "seems to show" that Corbin "advanced Arctic Glacier's conspiratorial interests in territories beyond Michigan's borders," and thus if he does not admit to conduct outside Michigan, Plaintiff will argue to the jury that he is committing perjury because Arctic Glacier has paid him to do so. DQ Motion at 12 n.3. This assertion is especially offensive because it has absolutely no foundation. Moreover, there is no conceivable reason that this Plaintiff would need to extract confessions of conduct outside Michigan from anyone, because the claim in this case is a MARA claim concerning only conduct in Michigan.

Even where a concurrent conflict exists – which is not the case here – joint representation is permissible where the lawyer (1) reasonably believes the representation will not adversely affect the relationship with either client; and (2) each client consents after consultation. *See* MRPC 1.7(a)(1) & (2). Both elements of this rule have been satisfied in this case.

First, as explained above, before undertaking representation of the Individuals in *Stanford*, counsel conducted a rigorous analysis of the facts and issues present in both *Stanford* and the MDL. Render Decl. ¶ 5. In the exercise of counsel's professional judgment and discretion, it was concluded that the interests of all defendants were fully aligned and that no actual conflict of interest existed as a result of Jones Day and Dykema's concurrent representation of these parties. *Id.* Counsel also believed that their representation of the respective defendants would not adversely affect the relationship either firm has with any other defendant. Such reasoned determinations are entitled to deference. *Clay*, 608 F. Supp. at 304 (Counsel's "statement that his joint representation of defendants entails no conflicts warranting withdrawal merits some deference. This Court will not *presume* reputable counsel have winked at or wholly ignored their responsibilities under the Code, at least when their representations are to the contrary. To give any lesser credence to counsel's representations, and to the bar's capacity for self-regulation, seems both cynical and unwise."); *see also Robin v. Katten Muchin*, No. 85-C-8913, 1986 WL 7079, at *10 (N.D. Ill. June 13, 1986) (same).

Second, prior to undertaking representation, counsel explained to the Individuals and the Arctic Glacier entities the nature of the joint representation, as well as counsel's continued representation of the Arctic Glacier entities in the MDL. Each party consented, after consultation, to the dual representation. Render Decl. ¶¶ 6, 9. Thus, not only is there no

concurrent conflict here, but each party's informed consent after consultation would waive the existence of the purported conflict if it did actually exist. *See* MRPC 1.7.[9, 10]

Third, contrary to Plaintiff's suggestion, "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). In fact, nonconsentable conflicts are generally found in only extreme situations, where, for instance, an attorney represents both sides in a conflict, *see, e.g., Evans & Luptak, PLC v. Lizza*, 650 N.W.2d 364 (Mich. 2002) (finding a conflict nonconsentable under MRPC 1.7(a)(1) when an attorney advocated the filing of a wrongful death lawsuit against one client on behalf of another), or where the parties' interests are "fundamentally antagonistic to each other." ABA Model Rules of Professional Conduct, Rule 1.7, Comment 28.

As explained above, the Individuals' and Arctic Glacier's interests are materially aligned. This is therefore not a situation where "the differences between the wrangling parties are large enough" (DQ Motion at 11) to render a (nonexistent) conflict nonconsentable. As set forth above, Plaintiff is completely wrong in contending that Jones Day and Dykema "have already shown that they cannot be expected to consider carefully and recommend objectively any position that may harm Arctic Glacier." There is no nonconsentable conflict here.

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[9] Notably, Plaintiff argues that counsel should be disqualified from their continued representation of the Arctic Glacier entities only "[i]n the absence of informed consent" by the Individuals and Arctic Glacier. DQ Motion at 16. As shown above, the Individuals and the Arctic Glacier entities have given informed consent to continued representation of the company.

[10] Plaintiff asserts without basis that counsel used confidential information obtained from one client "to advance the adverse interests of another client." DQ Motion at 16. Plaintiff, however, agrees that the sharing of confidential information is appropriate when "informed consent" is obtained, which occurred here. *Id.* (disqualification is appropriate only "in the absence of 'informed consent'"); *see also* MRPC 1.6(c)(1) ("A lawyer may reveal: (1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them."). Render Decl. ¶ 8.

IV. DISQUALIFICATION IS NEITHER WARRANTED NOR APPROPRIATE.

Disqualification is an extraordinary remedy and is not required even in cases where, unlike here, an ethical violation has occurred. *Shaw v. London Carrier, Inc.*, No. 1:08-cv-401, 2009 WL 4261168, at *3 (W.D. Mich. Nov. 24, 2009) (Even "[a] violation of the rules of professional ethics . . . does not automatically necessitate disqualification of an attorney."). Thus, while the ethical rules are useful guides, they are not "mechanically applied." *See FDIC v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1314 (5th Cir. 1995).[11]

Here, counsel's continued representation of the Individuals and the Arctic Glacier entities will not undermine the integrity and fairness of the proceedings such that these clients should be deprived of counsel of their choosing. *Employers Mutual*, 2009 WL 2711963, at *10. Plaintiff shows no undue prejudice he will suffer from counsel's continued representation, and there is none. But the prejudice to the Individuals and the Arctic Glacier entities will be substantial if counsel are disqualified. Jones Day has worked with the Arctic Glacier entities on the MDL for nearly three years in investigating complex facts and developing legal theories. Depriving the Arctic Glacier entities of their counsel now would be a severe setback. The same is true vis-à-vis the Individuals, who will also benefit from counsel's unique knowledge and experience in the packaged ice industry. *See United States v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980)

[11] *See also United States v. Kitchin*, 592 F.2d 900, 903 (5th Cir. 1979) ("acts which appear to violate the ABA Code or other accepted standards of legal ethics do not confer upon the trial court unfettered discretion to disqualify the attorney selected by a party;" courts must consider whether "in light of the interests underlying the standards of ethics, the social need for ethical practice outweighs the party's right to counsel of his choice"); *Cliffs Sales Co. v American S.S. Co.*, No. 1:07-CV-485, 2007 WL 2907323, at *2 (N.D. Ohio Oct. 4, 2007) (rejecting disqualification after finding a violation of Rule 1.7, noting that "[a] district court has broad discretion in ruling on motions to disqualify counsel," and "a violation of the rules of professional responsibility does not automatically necessitate disqualification").

(retaining choice of one's counsel is an important countervailing policy to disqualification). Moreover, the Arctic Glacier entities and the Individuals would face substantial costs in bringing new counsel up to speed on the complex set of facts and legal theories that counsel has developed in this and related cases.

There is no basis for disqualification here.[12]

V. CONCLUSION

Courts understandably are wary of disqualification motions because of their potential for abuse. This motion is a perfect example of that abuse. Plaintiff's DQ Motion should be denied.

Dated: August 16, 2010

Respectfully submitted,

/s/ Paula W. Render

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[12] Plaintiff also asserts, wrongly, that he needs depositions, documents and subpoenas, and an evidentiary hearing. As explained in *MJK Family LLC*, 676 F. Supp. 2d at 592 (citing *General Mill Supply Co. v. SCA Servs., Inc.*, 697 F.2d 704, 710 (6th Cir. 1982) ("[A] decision to disqualify counsel must be based on a factual inquiry conducted in a manner allowing appellate review, but an evidentiary hearing is not necessarily required."). The Declarations filed with this motion provide the facts. Plaintiff simply seeks impermissible discovery of the Individuals regarding conduct not included in his complaint.

CERTIFICATE OF SERVICE

I hereby certify that August 16, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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