UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC., *et al.*,[1]	:	Case No. 12-10605 (KG)
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	Re Dkt #166 & 219

ORDER APPROVING STIPULATION BY AND BETWEEN THE MONITOR, THE DEBTORS AND WILD LAW GROUP GRANTING PARTIAL AND LIMITED RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH CERTAIN DISCOVERY

Upon consideration of the *Stipulation by and Between the Monitor, the Debtors, and Wild Law Group Granting Partial and Limited Relief from the Automatic Stay to Proceed with Certain Discovery* (the "Stipulation"), a copy of which is attached hereto as **Exhibit 1-A**; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Stipulation is approved.

2. This Court shall retain jurisdiction to interpret, enforce, and resolve any disputes arising under or related to the Stipulation. Any motion or application brought before this Court to resolve any dispute arising under or related to the Stipulation shall be brought on proper

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

notice in accordance with either the terms of the Stipulation or the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

Dated: April 23 2013
Wilmington, Delaware

The Honorable Kevin Gross
Chief United States Bankruptcy Judge

Exhibit 1-A

The Stipulation

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

STIPULATION BY AND BETWEEN THE MONITOR, THE DEBTORS, AND WILD LAW GROUP GRANTING PARTIAL AND LIMITED RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH CERTAIN DISCOVERY

This stipulation (the "Stipulation") is entered into by and between Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") for the above-captioned debtors (collectively, the "Debtors") in the proceeding (the "Canadian Proceeding") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and pending before the Court of Queen's Bench Winnipeg Centre (the "Canadian Court"), the Debtors, and the Wild Law Group PLLC ("Wild Law Group") (Wild Law Group, together with the Monitor and the Debtors, hereinafter referred to as the "Parties") as putative representative of the uncertified proposed class of indirect purchaser plaintiffs ("IPPs") in *In re Packaged Ice Antitrust Litigation*, No. 09-

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

MD-1952 (E.D. Mich.) (the "Action"[2]). On February 22, 2012, the Monitor commenced these proceedings (the "Chapter 15 Cases") by filing with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") verified petitions on behalf of each of the Debtors, pursuant to sections 1504 and 1515 of title 11 of the United States Code (the "Bankruptcy Code"), seeking recognition by the Bankruptcy Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

RECITALS

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

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

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

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[2] As used herein, an "Action" shall include any appeals thereto.

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

WHEREAS, on July 17, 2012, the Bankruptcy Court entered the *Order Pursuant to Sections 105(a), 363, 1501, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014 (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 126] (the "U.S. Sale Order") recognizing and giving full force and effect in the United States to the CCAA Vesting Order;

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

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

WHEREAS, in order to ensure that proposed class action claimants, including the IPPs, be provided with a fair and reasonable opportunity to attempt to prove their claims in

the claims process, the Claims Procedure Order allows for the filing of "Class Claims" by "Class Representatives";[3]

WHEREAS, the Monitor has received a timely proof of claim dated November 5, 2012 submitted on behalf of the IPPs (the "Proof of Claim"), which asserts an unsecured claim in the estimated amount of "at least $463,577,602" against Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc., each a Debtor;

WHEREAS, as described in the *Tenth Report of the Monitor*, dated March 5, 2013 [Docket No. 208], the Monitor has been involved in ongoing discussions concerning the Action with the Debtors' Canadian and United States counsel, including antitrust counsel who have been involved in the Action for many years;

WHEREAS, the Monitor has reviewed certain pleadings, court decisions, and related court materials that have been filed in the Action, and the Monitor and its counsel have held numerous discussions with counsel to the IPPs concerning the substantive legal and factual issues presented by the Proof of Claim;

WHEREAS, in an effort to reach an early resolution of the issues presented by the Proof of Claim, the Monitor, the Applicants, and the IPPs agreed to participate in a mediation presided over by the Honorable former Justice George Adams, which took place in Toronto, Ontario over a two-day period (January 31 and February 1, 2013);

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3 While allowing for the filing of "Class Claims," the Claims Procedure Order provides that "nothing contained in this Order shall prejudice the Arctic Glacier Parties' or the Monitor's rights to object to or otherwise oppose, on any and all bases, the validity and/or amount of any Class Claim that may be filed by the . . . Indirect Purchaser Claimants in the CCAA Proceedings, including on the basis that the class cannot be certified under applicable law or the claim is not otherwise qualified as a Class Claim in the Claims Process established by this Order or further order of this Court." (Claims Procedure Order, ¶ 32.) Nothing contained in this Stipulation shall constitute a waiver or admission that would limit or modify the Debtors' or the Monitor's rights to object to any Class Claim on the foregoing grounds, and those grounds for objection are expressly reserved.

WHEREAS, before the mediation, and in accordance with the Claims Procedure Order, the Monitor issued a comprehensive Notice of Revision or Disallowance (as defined in the Claims Procedure Order) dated January 24, 2013, which disallowed the Proof of Claim in its entirety;

WHEREAS, in order to facilitate the mediation, the Monitor agreed that the parties should focus their attention on the mediation and, thus, pursuant to paragraph 5 of the Claims Procedure Order, agreed to extend the deadline for the delivery of a Dispute Notice (as defined in the Claims Procedure Order) by the IPPs to a date to be specified by the Monitor;

WHEREAS, despite the assistance of Honorable Mr. Adams, the parties were not able to reach a resolution at the mediation and, on February 12, 2013, the Monitor informed counsel to the IPPs that the twenty-one day dispute period, provided for in paragraph 41 of the Claims Procedure Order, in respect of the Proof of Claim would commence on February 13, 2013;

WHEREAS, the Monitor received a Notice of Dispute from the IPPs on March 4, 2013;

WHEREAS, the IPPs have indicated that, in order to better estimate their damages and to obtain sufficient information to participate in the claims process, they require, among other things, information filed in cases in certain United States courts (collectively, the "Cases"[4]) that is subject to certain protective orders;

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[4] The Cases are, and shall include any appeals thereto: (a) *In re Packaged Ice Antitrust Litigation*, No. 08-MD-1952 (E.D. Mich.); (b) *U.S. v. Arctic Glacier International, Inc.*, No. 09-CR-00149 (S.D. Ohio); (c) *U.S. v. Cooley*, No. 09-CR-00148 (S.D. Ohio); (d) *U.S. v. Corbin*, No. 09-CR-00146 (S.D. Ohio); (e) *U.S. v. Home City Ice Company*, No. 07-CR-00140 (S.D. Ohio); (f) *U.S. v. Larson*, No. 09-CR-00147 (S.D. Ohio); and (g) *In re Acker*, No. 08-MJ-68 (N.D. Tex.).

WHEREAS, the Monitor seeks to facilitate the IPPs' filing of certain motions[5] in the Cases that would ask the relevant presiding courts to grant the IPPs and the Monitor access to certain information possessed by the United States Government;

NOW THEREFORE, it is hereby stipulated and agreed that:

1. The stay imposed pursuant to sections 1521(a)(1) and 362(a) of the Bankruptcy Code is lifted to the extent necessary and for the sole purpose of permitting the IPPs to file the motions, substantially in the forms annexed hereto as **Exhibit A** through **H** (each a "Discovery Motion" and, collectively, the "Discovery Motions"), in the Cases and seek the relief described in the Discovery Motions.

2. Except where prohibited by law, any materials or information obtained by the IPPs by virtue of an order granting, in whole or in part, any Discovery Motion ("Discovery") shall be shared with the Monitor and its counsel and the Debtors and their counsel.

3. Should the IPPs file a Discovery Motion in the Cases that is (a) not substantially in the form annexed hereto, as determined by the Monitor in the exercise of its reasonable discretion, (b) not in form and substance acceptable to the Monitor in the exercise of its reasonable discretion, or (c) to the extent that neither (a) nor (b) is achieved after good-faith discussions between the Parties, not authorized to be filed in a particular Case by the Bankruptcy Court, that Discovery Motion shall automatically be null and void.

4. Other than as explicitly set forth herein, any and all protections and benefits afforded to the Monitor and the Debtors by the Initial Order, the Provisional Relief

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5 Certain of the Discovery Motions (as defined herein) are styled as joint motions of the Monitor, the Debtors, and the IPPs. The Monitor and the Debtors do not believe that the stay imposed pursuant to sections 1521(a)(1) and 362(a) of the Bankruptcy Code needs to be modified in order to permit the Monitor and the Debtors to be a party to such Discovery Motions. To the extent that the stay does require modification to permit the Monitor and the Debtors to be party to certain of the Discovery Motions, this Stipulation shall constitute an agreement between the Parties (as defined herein) to modify the stay for such purpose.

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

5. Nothing contained herein is intended to be or should be construed as an admission of any fact, claim, right, or defense that the Parties may have with respect to the Action and/or the Proof of Claim, and all rights, claims, and defenses are hereby expressly reserved.

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

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

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

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

Dated: April 22, 2013
Wilmington, Delaware

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Dated: April 22, 2013
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Exhibit A

Joint Motion for Equal Access to Recordings and Transcripts

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

IN RE PACKAGED ICE ANTITRUST LITIGATION	08-md-1952
THIS DOCUMENT RELATES TO: INDIRECT PURCHASER ACTIONS	Judge: Hon. Paul D. Borman Magistrate Judge: Hon. R. Steven Whalen

JOINT MOTION FOR EQUAL ACCESS TO THE GOVERNMENT'S TAPE RECORDINGS AND TRANSCRIPTS

The Indirect Purchaser Plaintiffs ("Plaintiffs"), the Arctic Glacier Defendants, and Intervenor Alvarez & Marsal Canada Inc. jointly move the Court to provide equal access to the Department of Justice's ("DOJ") tape recordings and transcripts that have been previously produced by the DOJ to the direct purchasers and defendants in this litigation, for use by the following: (a) Plaintiffs; (b) Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (the "Monitor") and authorized foreign representative for the Arctic Glacier entities in the proceeding (the "Canadian Proceeding") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and pending before the Court of Queen's Bench Winnipeg Centre (the "Canadian Court"), as well as the Monitor's outside counsel (listed below); (c) the Special Claims Officer (as defined below), (d) the Chief Process Supervisor (also as defined below); and (e) the Canadian Court, in connection with the prosecution of Plaintiffs' proof of claim in the Canadian Proceeding. Although Plaintiffs' action has been stayed in this Court and Plaintiffs' claims will be determined in the Canadian Proceeding, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has approved a stipulation by and between the Monitor, the Debtors (as defined below), and Plaintiffs modifying the automatic stay to allow Plaintiffs to file this and certain other

motions in certain civil and criminal cases concerning certain of the Debtors. In support of their motion, Plaintiffs state:

1. On February 22, 2012, Arctic Glacier Income Fund, Arctic Glacier, Inc., Arctic Glacier International, Inc. and certain of their affiliates (collectively, "Arctic" or the "Debtors") commenced the Canadian Proceeding, and the Canadian Court entered an initial order (including any extensions, amendments, or modifications thereto, the "Initial Order"), pursuant to the CCAA, providing a stay of proceedings and various forms of relief thereunder. (*See* Ex. A.) On March 16, 2012, the Bankruptcy Court, over Plaintiffs' objection, entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, pursuant to which the Bankruptcy Court granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of title 11 of the United States Code (*see* Ex. B), thereby extending during the pendency of the chapter 15 cases, a stay of all proceedings against or concerning property of the Debtors located within the territorial jurisdiction of the United States.

2. The above-referenced orders provide that the Monitor is an officer of the Canadian Court exercising powers granted to it by the CCAA and the Initial Order, *inter alia*, to assist the Canadian Court in its supervision of the Canadian Proceeding. Among the powers and responsibilities granted to the Monitor by a claims procedure order issued by the Canadian Court on September 5, 2012 (the "Claims Procedure Order"), as recognized and enforced by the Bankruptcy Court on September 14, 2012, is to identify and determine creditor claims against the Debtors. (*See* Ex. C.)

3. The firm 7088418 Canada Inc. o/a Grandview Advisors was appointed as the Chief Process Supervisor pursuant to paragraph 25 of the Initial Order. Pursuant to a Transition Order of the Canadian Court dated July 12, 2012, the Chief Process Supervisor is empowered

and authorized to take such additional actions as required to assist the Debtors in connection with the administration of the Canadian Proceeding and the Monitor in performing the Monitor's functions. In particular, pursuant to the Claims Procedure, the Canadian Court ordered that any requirement of the Monitor to consult with the Debtors in respect of the Claims Process would be satisfied through consultation with the Chief Process Supervisor. (*See* Ex. E ¶11.)

4. Pursuant to Paragraph 47 of the Claims Procedure Order, a special claims officer (the "Special Claims Officer") will be appointed to hear and determine the value of Plaintiffs' claims, with the Special Claims Officer's determination subject to appeal to the Canadian Court. If Plaintiffs do not litigate their claims in the Canadian Proceeding, their claims will be forfeited.

5. Prior to the commencement of the Canadian Proceeding described above, this Court ordered the DOJ to produce certain recordings and transcripts to the direct purchaser plaintiffs. *See* Dkt. Nos. 386, 399, and 402 (attached collectively to this motion as Ex. 1). The Court also granted Reddy's and Arctic's motions for equal access to the recordings and transcripts produced to the direct purchaser plaintiffs. *See* Dkt. No. 373.

6. To facilitate determination of Plaintiffs' claims in the Canadian Proceeding, Movants respectfully request that the Court direct the direct purchasers to provide copies of the recordings and Arctic Glacier to provide copies of the transcripts listed in the Court's Orders at Dkt. Nos. 386, 399, and 402 to Plaintiffs and the Monitor.

7. Although Arctic has received a copy of the recordings from the direct purchasers as set forth above, some of the recordings are of poor quality, at least in part, and that the recordings should therefore be produced to Plaintiffs by the direct purchasers or the DOJ rather than Arctic to avoid any potential allegation of spoliation or intentional interference with the

recordings. Arctic will, however, to produce copies of the transcripts to Plaintiffs if and when this motion is granted.

8. Counsel for the direct purchasers, William Hoese, has authorized Plaintiffs to represent that the direct purchasers are willing to make copies of the recordings for Plaintiffs and the Monitor.

9. Movants are willing to be bound by a protective order similar to the Protective Order Concerning Tape Recordings and Transcripts this Court entered on July 26, 2011. *See* Dkt. No. 386-1 (attached as Ex. 2). Plaintiffs, the Monitor, and Arctic are submitting contemporaneously with this motion a joint motion to modify the protective orders in this case, including the Protective Order Concerning Tape Recordings and Transcripts previously entered by this Court. Movants are authorized to state that (a) the Monitor's outside counsel agree to be bound by the proposed protective order; (b) the Monitor will provide a copy of applicable protective orders to any Special Claims Officer appointed and will notify the Special Claims Officer that it is subject to the terms thereof; (c) the Chief Process Supervisor agrees to be bound by the proposed protective order; and (d) the Movants will use good-faith efforts to ensure that any information obtained from review of the transcripts or recordings will be filed, if at all, with the Canadian Court pursuant to a protective order of the Canadian Court.

10. Belinda Barnett of the U.S. Department of Justice, Antitrust Division, authorized Movants to state the following: "[T]he Antitrust Division does not object to the motion on the conditions that the Plaintiffs and Monitor be responsible for obtaining, at their own expense, copies of the recordings from the Direct Purchaser Plaintiffs and copies of the transcripts from Arctic and that the disclosure of the recordings and transcripts be subject to the proposed protective order."

11. The Home City Ice Company, Reddy, and the Direct Purchaser Plaintiffs have authorized the Movants to state that this motion in unopposed.

WHEREFORE, Movants respectfully request the Court to:

- grant Plaintiffs, the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and (if necessary) the Canadian Court equal access to the DOJ recordings and transcripts referred to in the Court's Orders at Dkt. Nos. 386, 399, and 402;

- direct counsel for the Direct Purchaser Plaintiffs to provide Plaintiffs and the Monitor with copies of the recordings within ten days of a written request for them, at Plaintiffs' and the Monitor's respective expense; and

- direct Arctic to provide copies of the transcripts to Plaintiffs and the Monitor within ten days of a written request for them.

Dated: April __, 2013 Respectfully submitted,

Interim Lead And Liaison Counsel For Plaintiffs	*Counsel for Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International, Inc.*
/s/ Matthew S. Wild	/s/ Paula W. Render
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CONTINUED ON NEXT PAGE

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CERTIFICATE OF SERVICE

I hereby certify that on April __, 2013, I electronically filed the foregoing **MOTION FOR EQUAL ACCESS TO THE GOVERNMENT'S TAPE RECORDINGS AND TRANSCRIPTS** with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF users. I further certify that I have mailed, via first-class mail and email, a true and accurate copy of this same document to the non-ECF participants listed below.

_____
[NAME]

NON-ECF PARTICIPANT COUNSEL OF RECORD (VIA U.S. MAIL)	
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01:13539240.1

CCAA ENTITIES (VIA U.S. MAIL AND EMAIL)	
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	Chief Process Supervisor: Bruce Robertson bkrobertson@yahoo.com GRANDVIEW ADVISORS 39 Wynford Drive Don Mills, Ontario M3C 3K5 Tel. (416) 816-8041 Fax (416) 446-0050

Exhibit B

Joint Motion to Modify Protective Orders

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

IN RE: PACKAGED ICE ANTITRUST LITIGATION	Civil Action No. 2:08-MD-1952
THIS DOCUMENT RELATES TO: ALL INDIRECT PURCHASER ACTIONS	Honorable Paul D. Borman

JOINT MOTION OF THE INDIRECT PURCHASERS, ARCTIC GLACIER AND THE MONITOR TO MODIFY THE PROTECTIVE ORDERS

This motion is brought jointly by the Indirect Purchaser Plaintiffs ("IPPs"); Defendants Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc. (collectively, "Arctic Glacier"); and Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") of Arctic Glacier. The foregoing parties hereby move for two orders. First, the parties request an order modifying the Stipulated Protective Order Concerning the Confidentiality of Discovery Materials (Dkt. 295) issued in the MDL litigation, expressly to allow the Monitor and its outside counsel, the Special Claims Officer (as defined herein), the Chief Process Supervisor (as defined herein), and, if necessary, the Canadian Court (as defined herein), to have access to confidential information produced in these cases (a proposed Order to this effect is attached as Ex. A). Second, if the Court enters the IPPs' motion for equal access to certain recordings and transcripts, the parties request that the Court enter a modified version (*see* Ex. B) of the Court's previous Protective Order Concerning Tape Recordings and Transcripts (Dkt. 386-1) so that the recordings and transcripts may be disclosed to the IPPs, the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and (if necessary) the Canadian Court. The parties make

these requests so that all necessary parties will have access to confidential documents, deposition transcripts, recordings, and other materials, for the purpose of resolving the IPPs' claims in Arctic Glacier's bankruptcy proceedings.

In support of this motion, the parties state as follows:

Arctic Glacier's Bankruptcy Proceedings

1. In February 2012, Arctic Glacier and certain of its affiliates (collectively, the "Debtors") commenced proceedings under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA"), before the Manitoba Court of the Queen's Bench of Winnipeg Centre (the "Canadian Court"), File No. CI 12-01 76323 (the "Canadian Proceeding"). The Canadian Court appointed Alvarez & Marsal Canada Inc. as the Monitor pursuant to the CCAA. Initial Order ¶ 42. (*See* Ex. C.) The U.S. Bankruptcy Court for the District of Delaware (the "Delaware Court") has recognized Alvarez & Marsal Canada Inc. as the "foreign representative" of the Debtors. Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief ¶ C (the "U.S. Recognition Order," attached as Ex. D). Section 1509 of the U.S. Bankruptcy Code provides that a foreign representative "may apply directly to a court in the United States for appropriate relief in that court." 11 U.S.C. § 1509(b)(2).

2. The firm 7088418 Canada Inc. o/a Grandview Advisors was appointed as the Chief Process Supervisor pursuant to paragraph 25 of the Initial Order. Pursuant to a Transition Order of the Canadian Court dated July 12, 2012, the Chief Process Supervisor was empowered and authorized to take such additional actions as required to assist the Debtors in connection with the administration of the CCAA Proceedings and the Monitor in performing the Monitor's functions. In particular, pursuant to a Claims Procedure Order of the Canadian Court dated

September 5, 2012 (the "Claims Procedure Order"), the Canadian Court ordered that any requirement of the Monitor to consult with the Debtors in respect of the Claims Process would be satisfied through consultation with the Chief Process Supervisor. (*See* Ex. E ¶ 11.)

3. The Claims Procedure Order established procedures for the submission and determination of claims against the Debtors and their directors, officers, and trustees (the "Claims Process"). The U.S. Recognition Order recognized and gave full force and effect in the United States to the Claims Procedure Order. Pursuant to the Claims Procedure Order, the Monitor has the authority to attempt to resolve or settle claims filed in the Claims Process.

4. In accordance with the Claims Procedure Order, the IPPs have submitted a proof of claim (the "Proof of Claim") in the Claims Process for the relief they had previously sought in this Court. *See, e.g.,* Tenth Report of the Monitor, *available at* http://www.amcanadadocs.com/articglacier/documents/Tenth%20Report%20of%20the%20Monitor%20(March%205%202013).pdf (March 5, 2013). The Monitor has reviewed certain pleadings, court decisions, and related court materials, and the Monitor and its counsel have held numerous discussions with counsel to the IPPs concerning the substantive legal and factual issues presented by the Proof of Claim.

5. In accordance with the Claims Procedure Order, the Monitor issued a comprehensive Notice of Revision or Disallowance (as defined in the Claims Procedure Order), dated January 24, 2013, which disallowed the Proof of Claim in its entirety. The Monitor agreed, pursuant to paragraph 5 of the Claims Procedure Order, to extend the deadline for the delivery of a Dispute Notice (as defined in the Claims Procedure Order) by the IPPs, to a date to be specified by the Monitor.

6. The Monitor received a timely Notice of Dispute from the IPPs on March 4, 2013. In accordance with paragraph 47 of the Claims Procedure Order, the Monitor expects, in the near-term, to appoint a special claims officer (the "Special Claims Officer") acceptable to the Monitor, the Debtors, and the IPPs, to determine the validity and amount of the Proof of Claim. The Special Claims Officer's decision as to the validity and/or amount of the Proof of Claim is binding upon the Debtors, the Monitor, and the IPPs, subject to the IPPs right to appeal such decision to the Canadian Court.

7. Although the IPP's action against the Debtors has been stayed in this Court, the Delaware Court has approved a stipulation by and between the Monitor, the Debtors, and the IPPs modifying the automatic stay to allow the IPPs to file this and other motions in certain civil and criminal cases concerning certain of the Debtors. (*See* Ex. F.)

8. The parties to this motion have agreed to seek this modification of the protective orders so that the IPPs may pursue their claims in the Canadian Proceeding and so that the Monitor, the Special Claims Officer, the Chief Process Supervisor, and the Canadian Court (if necessary), may appropriately evaluate the Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute.

9. The claims brought by the IPPs are no longer subject to this Court's jurisdiction because they are being determined in the Canadian Proceeding pursuant to the Claims Process. The parties do not submit the IPPs' claim to the jurisdiction of this Court by submitting this motion.

The Relief Requested

10. A Stipulated Protective Order Concerning Confidentiality of Discovery Materials ("Discovery Protective Order") was entered by the Court in the multidistrict litigation, *In re*

Packaged Ice Antitrust Litigation, ensuring that confidential material would not be disseminated beyond the litigation. (*See* MDL Dkt. 295, attached as Ex. G). The Discovery Protective Order permits the persons adjudicating and administering the respective cases—be they the court, a special master, or a mediator—to receive and review confidential information. (*See* MDL Dkt. 295 ¶¶7-8.) The Discovery Protective Order also permits the IPPs' counsel to receive and review confidential information. (*Id.* ¶¶ 7, 8.) The parties to this motion request entry of an Order modifying of the Discovery Protective Order so that materials produced in discovery and designated as "Confidential" or "Highly Confidential" may be disclosed to the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and the Canadian Court (if necessary). A proposed Order is attached as Ex. A.

11. The Movants also have filed a motion with this Court seeking equal access to certain recordings and transcripts made by the DOJ during its investigation of the packaged ice industry. Previously, when this Court directed the production of the recordings and transcripts to the direct purchaser plaintiffs, the Court also entered a Protective Order Concerning Tape Recordings and Transcripts that were produced to the Direct Purchaser Plaintiffs by the Antitrust Division of the Department of Justice. (*See* MDL Dkt. 386-1, attached as Ex. H) In their motion for equal access to the recordings and transcripts, IPPs, the Monitor, and Arctic Glacier have proposed a modified version of that Protective Order that permits access to the recordings and transcripts by the IPPs and by the Monitor so that material from the recordings and transcripts may be used in the Canadian Proceeding. If the Court grants the motion for equal access to the recordings and transcripts, the parties to this motion request entry of the modified version of the Protective Order Concerning Tape Recordings and Transcripts (attached as Ex. B).

12. The IPPs, the Monitor (Alvarez & Marsal Canada Inc.) and its outside counsel (in Canada, the law firm Osler, Hoskin & Harcourt LLP, and in the United States, Willkie Farr & Gallagher LLP and Young Conaway Stargatt & Taylor, LLP); and 7088418 Canada Inc. o/a Grandview Advisors, the Chief Process Supervisor; who are signatories to this motion, hereby agree to abide by the provisions of the Court's above-referenced protective orders and will treat all documents designated as confidential or confidential-attorneys'-eyes-only in accordance with the terms of those orders. The Monitor represents that the Monitor will provide a copy of the applicable protective orders to any Special Claims Officer appointed and will notify the Special Claims Officer that he or she is subject to the terms thereof. Moreover, the signatories to this Motion will use good-faith efforts to ensure that any information obtained by virtue of the relief granted by this Court will be subject to protective orders in the Canadian Proceeding, if necessary.

13. Defendants Reddy Ice Holdings, Inc., Reddy Ice Corporation, and Home City Ice Company, and the Direct Purchaser Plaintiffs, do not oppose the requested relief. Likewise, the DOJ authorized Movants to state that it does not oppose this motion.

WHEREFORE, for all these reasons, and for the reasons described in the attached memorandum, the parties to this motion (the Indirect Purchaser Plaintiffs; Defendants Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc.; and Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized representative of Arctic Glacier) respectfully make two requests. First, the parties request that the Court issue an order modifying the Stipulated Protective Order Concerning the Confidentiality of Discovery Materials issued in the MDL litigation to allow the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and the Canadian Court (if necessary) to have

access to confidential information produced in these cases, and the parties provide a proposed Order to that effect. (*See* Proposed Order, Ex. A.) Second, if the Court grants the Movants' motion for equal access to the DOJ's recordings and transcripts, the parties to this motion request that the Court enter the modified version of the Protective Order Concerning Tape Recordings and Transcripts, attached as Ex. B.

Dated: April __, 2013 Respectfully submitted,

Dated: April __, 2013 Respectfully submitted,

MOVANTS	
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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

IN RE: PACKAGED ICE ANTITRUST LITIGATION	Civil Action No. 2:08-MD-1952
THIS DOCUMENT RELATES TO: ALL INDIRECT PURCHASER ACTIONS	Honorable Paul D. Borman

BRIEF IN SUPPORT OF THE JOINT MOTION OF THE INDIRECT PURCHASERS, ARCTIC GLACIER AND THE MONITOR TO MODIFY THE PROTECTIVE ORDERS

ISSUE PRESENTED

1. Whether the court should modify the protective orders issued in the *Packaged Ice* MDL to allow the IPPs and the Monitor and its outside counsel in Arctic Glacier's bankruptcy proceedings, the Special Claims Officer, the Chief Process Supervisor, and (if necessary) the Canadian Court to review relevant evidence designated confidential or highly confidential in these cases as part of their efforts to resolve the IPPs' claims in Arctic Glacier's bankruptcy proceedings?

STATEMENT OF CONTROLLING AND MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 26(c)

*Hochstein/89765*96 v. Microsoft Corp.*, No. 04-73071, 2008 WL 4387594 (E.D. Mich. Sept. 24, 2008)

In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig., 664 F.2d 114 (6th Cir. 1981)

Meyer Goldberg, Inc. of Lorain v. Fisher Foods, 823 F.2d 159 (6th Cir. 1987)

MSC Software Corp. v. Altair Eng'g, Inc., No. 07- CV-12807, 2008 WL 2478313 (E.D. Mich. June 17, 2008)

The parties to this motion are: the Indirect Purchaser Plaintiffs ("IPPs"); Defendants Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc. (collectively, "Arctic Glacier"); and Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") of Arctic Glacier.

The parties to this motion respectfully request that this Court issue an order in the form of Exhibit A modifying the Stipulated Protective Order Concerning the Confidentiality of Discovery Materials issued in the MDL litigation to allow the Monitor and its outside counsel, the Special Claims Officer (as defined herein), the Chief Process Supervisor (as defined herein), and, if necessary, the Canadian Court (as defined herein), to have access to confidential information produced in these cases; and also request that the Court enter a modified version of the Court's previous Protective Order Concerning Tape Recordings and Transcripts (proposed modified version attached as Exhibit B), so that the IPPs, the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and, if necessary, the Canadian Court may have access to the recordings and transcripts.

I. BACKGROUND

A. Arctic Glacier's Bankruptcy Proceedings and the Monitor's Role

In February 2012, Arctic Glacier and certain of its affiliates (collectively, the "Debtors") commenced proceedings under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA"), before the Manitoba Court of the Queen's Bench of Winnipeg Centre (respectively, the "Canadian Court" and the "Canadian Proceeding"). The Canadian Court entered an Initial Order on February 22, 2012 (the "Initial Order"). (*See* Ex. C.) The Initial Order, among other things, appointed Alvarez & Marsal Canada Inc. as the Monitor pursuant to the CCAA, to monitor the business and financial affairs of Arctic Glacier with the powers and obligations set out in the CCAA and the Initial Order. Initial Order ¶ 42. The Monitor is represented in Canada in the Canadian Proceeding by Osler Hoskin and Harcourt,

LLP, and in the United States by Willkie Farr & Gallagher, LLP and Young Conaway Stargatt & Taylor, LLP.

The U.S. Bankruptcy Court for the District of Delaware (the "Delaware Court") recognized the Canadian Proceeding as a "foreign main proceeding" pursuant to 11 U.S.C. § 1517. Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief ¶ 2, (the "U.S. Recognition Order," attached as Ex. D). In that order, the Delaware Court also ordered that the Initial Order was "hereby enforced on a final basis and given full force and effect in the United States." *Id.* ¶ 3. The Delaware Court also recognized Alvarez & Marsal Canada Inc. as the "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code. *Id.* ¶ C. Section 1509 of the Bankruptcy Code provides that a foreign representative "may apply directly to a court in the United States for appropriate relief in that court." 11 U.S.C. § 1509(b)(2).

7088418 Canada Inc. o/a Grandview Advisors was appointed as the Chief Process Supervisor pursuant to paragraph 25 of the Initial Order (Ex. C). Pursuant to a Transition Order of the Canadian Court dated July 12, 2012, the Chief Process Supervisor was empowered and authorized to takes such additional actions as required to assist the Debtors in connection with the administration of the CCAA Proceedings and the Monitor in performing the Monitor's functions. In particular, pursuant to a Claims Procedure Order of the Canadian Court dated September 5, 2012 (the "Claims Procedure Order"), the Canadian Court ordered that any requirement of the Monitor to consult with the Debtors in respect of the Claims Process would be satisfied through consultation with the Chief Process Supervisor. (*See* Ex. C, ¶¶ 25-27.)

The Claims Procedure Order established procedures for the submission and determination of claims against the Debtors and their directors, officers, and trustees (the "Claims Process"). The U.S. Recognition Order recognized and gave full force and effect in the United States to the

Claims Procedure Order. (*See* Ex. D.) Pursuant to the Claims Procedure Order, the Monitor has the authority to attempt to resolve or settle claims filed in the Claims Process.

In accordance with the Claims Procedure Order, the IPPs have submitted a proof of claim (the "Proof of Claim") in the Claims Process for the relief they had previously sought in this Court. *See, e.g.,* Tenth Report of the Monitor, *available at* http://www.amcanadadocs.com/articglacier/documents/Tenth%20Report%20of%20the%20Monitor%20(March%205%202013).pdf (March 5, 2013). The Monitor has reviewed certain pleadings, court decisions, and related court materials, and the Monitor and its counsel have held numerous discussions with counsel to the IPPs concerning the substantive legal and factual issues presented by the Proof of Claim.

In accordance with the Claims Procedure Order, the Monitor issued a comprehensive Notice of Revision or Disallowance (as defined in the Claims Procedure Order), dated January 24, 2013, which disallowed the Proof of Claim in its entirety. The Monitor agreed to extend the deadline for the delivery of a Dispute Notice (as defined in the Claims Procedure Order) by the IPPs, to a date to be specified by the Monitor.The Monitor received a Notice of Dispute it deemed timely from the IPPs on March 4, 2013. In accordance with paragraph 47 of the Claims Procedure Order, the Monitor expects, in the near-term, to appoint a special claims officer (the "Special Claims Officer") acceptable to the Monitor, the Debtors, and the IPPs, to determine the validity and amount of the Proof of Claim. The Special Claims Officer's decision as to the validity and/or amount of the Proof of Claim is binding upon the Debtors, the Monitor, and the IPPs, subject to the IPPs right to appeal such decision to the Canadian Court.

Although the IPP's action against the Debtors has been stayed in this Court, the Delaware Court has approved a stipulation by and between the Monitor, the Debtors, and the IPPs

modifying the automatic stay to allow the IPPs to file this and other motions in certain civil and criminal cases concerning certain of the Debtors. (*See* Ex. F.)

The parties to this motion have agreed to seek this modification of the protective orders so that the IPPs may pursue their claims in the Canadian Proceeding and so that the Monitor, the Special Claims Officer, the Chief Process Supervisor, and, if necessary, the Canadian Court, may appropriately evaluate the Proof of Claim, the Notice of Revision or Disallowance and the Notice of Dispute.

The claims brought by the IPPs are no longer subject to this Court's jurisdiction because they are being determined in the Canadian Proceeding pursuant to the Claims Process. The parties do not submit the IPPs' claim to the jurisdiction of this Court by submitting this motion.

B. The Modifications Jointly Requested by the Parties to This Motion

Certain materials were produced in the MDL by the defendants in the direct and indirect purchaser class actions, designated as "Confidential" or "Highly Confidential" pursuant to the terms of the Stipulated Protective Order Concerning Confidentiality of Discovery Materials (Dkt. 295, Nov. 8, 2010, attached as Ex. G). In addition, the deposition of Keith Corbin was taken in the MDL, and portions of his deposition transcript and certain deposition exhibits were likewise designated as "Confidential" or "Highly Confidential" pursuant to that Order. The Order permits disclosure of these materials to the IPPs and to Arctic Glacier, but arguably not to the Monitor, the Special Claims Officer, the Chief Process Supervisor, or the Canadian Court. *Id.* ¶¶ 7, 8. The parties to this motion request entry of an Order modifying the Stipulated Protective Order Concerning Confidentiality of Discovery Materials ("Discovery Protective Order") expressly allowing the Monitor (and its outside counsel), the Special Claims Officer, the Chief Process Supervisor, and, if necessary, the Canadian Court to see these materials so that the IPPs may use the materials to pursue their claims and for the Monitor, the Special Claims Officer, the Chief

Process Supervisor, and (if necessary) the Canadian Court to evaluate the IPPs' claims. *See* [Proposed] Stipulated Order Modifying the Discovery Protective Order (Dkt. 295), attached as Ex. A.

In addition, on this Court's orders, the DOJ produced certain recordings and transcripts in the MDL to the direct purchaser plaintiffs, subject to a Protective Order Concerning Tape Recordings and Transcripts (Dkt. 386-1, attached as Ex. H). The Court also directed production of the recordings and transcripts to the Reddy Ice Defendants and to Arctic Glacier, subject to the same protective order. The movants alsohave filed a motion seeking access to the recordings and transcripts. If that motion is granted, the parties to this motion seek entry of a modified version of the Protective Order Concerning Tape Recordings and Transcripts that will permit access to the tapes by the IPPs, the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and (if necessary) the Canadian Court. A copy of the modified version is attached to this motion as Ex. B.

II. LEGAL STANDARD

Rule 26(c) authorizes a court to issue a protective order for good cause shown "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]" Fed. R. Civ. P. 26(c). Having entered such an order, a federal court retains the discretion to modify the protective order as it deems necessary. *See In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 664 F.2d 114, 118 (6th Cir. 1981); *Meyer Goldberg, Inc. of Lorain v. Fisher Foods,* 823 F.2d 159, 163 (6th Cir. 1987); *Hochstein v. Microsoft Corp.*, No. 04-73071, 2008 WL 4387594, *2 (E.D. Mich. Sept. 24, 2008).

The Sixth Circuit has held that "[p]rotective orders may be subject to modification to meet the reasonable requirements of parties in other litigation." *Meyer Goldberg,* 823 F.2d at 161. If access to the protected information can be granted without harming legitimate secrecy

interests, access to the information should be granted. *Id.* at 163. The party seeking modification of the order must explain why the modification is warranted. *See MSC Software Corp. v. Altair Eng'g, Inc.*, No. 07- CV-12807, 2008 WL 2478313, *1 (E.D. Mich. June 17, 2008) ("[T]he party seeking the modification must explain why its need for the materials outweighs existing privacy concerns.").

III. ARGUMENT

The requested modifications will permit the IPPs to use Confidential and Highly Confidential materials, and the recordings and transcripts, to pursue their claims in the Canadian Proceeding. The modification is appropriate, for the following reasons.

First, modifying the Discovery Protective Order is appropriate because the Monitor's and the Special Claims Officer's role in the Canadian-court supervised Claims Process, which has been recognized by the Delaware Court as being in the best interests of creditors, is similar to that of a mediator or special master, and the current protective orders permit such persons to have access to confidential materials. (*See* MDL Dkt. 295 ¶¶7-8, Ex. G.) This logic is sound as an adjudicator should have access to all of the available evidence, public or not, when considering claims or ruling on contested points of fact and applying the law, to ensure that he or she has considered all material facts. In addition, the role of the Chief Process Supervisor is to assist the Debtors in connection with the administration of the CCAA Proceedings and the Monitor in performing the Monitor's functions, and thus requires access to the same evidence that will be available to the IPPs, the Monitor, and the Debtors.

Second, no legitimate secrecy issues would be impaired by the requested modifications. The Monitor and its outside counsel, and the Chief Process Supervisor, agree to be bound by the provisions of the protective orders. The Monitor represents that the Monitor will provide a copy of the applicable protective orders to any Special Claims Officer and will notify the Special

Claims officer that he or she is subject to the terms thereof. Moreover, the Monitor, the Debtors, the Chief Process Supervisor, and the IPPs will use good-faith efforts to ensure that any information obtained by virtue of the relief granted by this Court will be subject to protective orders in the Canadian Proceeding, if necessary.

The IPPs, the Monitor and Arctic Glacier have filed a motion for equal access to the recordings and transcripts for the IPPs and the Monitor. If that motion is granted, it will be appropriate to enter the modified version of the Protective Order Concerning Tape Recordings and Transcripts (attached as Ex. B) to permit the IPPs, the Monitor and its outside counsel, the Special Claims Officer, the Chief Process Supervisor, and (if necessary) the Canadian Court to access the recordings and transcript made by the DOJ in its investigation. Entry of the modified version of the Order will protect the confidentiality of the recordings and transcripts while still permitting the IPPs to use the recordings and transcripts to pursue their claims in the Canadian Proceeding.

The other parties to the MDL (the Reddy defendants, Home City Ice Company, and the Direct Purchaser Plaintiffs) do not oppose this motion. The DOJ has likewise authorized Movants to state that it does not oppose this motion.

IV. CONCLUSION

For all of the reasons set forth in this Brief and its accompanying Motion, the parties to this motion (the Indirect Purchaser Plaintiffs; Defendants Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International Inc.; and Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative of Arctic Glacier) respectfully make two requests. First, the parties request that the Court issue an order modifying the Stipulated Protective Order Concerning the Confidentiality of Discovery Materials issued in the MDL litigation to allow the Monitor and its outside counsel, the Special Claims Officer, the

Chief Process Supervisor, and (if necessary) the Canadian Court to have access to confidential information produced in these cases, and the parties provide a proposed Order to that effect (Ex. A). Second, if the Court grants the motion of the IPPs, the Monitor, and Arctic Glacier for equal access for the IPPs and the Monitor to the DOJ's recordings and transcripts, the parties to this motion request that the Court enter the modified version of the Protective Order Concerning Tape Recordings and Transcripts, attached as Ex. B.

Dated: April __, 2013 Respectfully submitted,

MOVANTS	
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CONTINUED ON NEXT PAGE

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CERTIFICATE OF SERVICE

I hereby certify that on April __, 2013, I electronically filed the foregoing JOINT MOTION OF THE INDIRECT PURCHASERS, ARCTIC GLACIER AND THE MONITOR TO MODIFY THE PROTECTIVE ORDERS and BRIEF IN SUPPORT OF THE JOINT MOTION OF THE INDIRECT PURCHASERS, ARCTIC GLACIER AND THE MONITOR TO MODIFY THE PROTECTIVE ORDERS with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF users. I further certify that I have mailed, via first-class mail and email, a true and accurate copy of this same document to the non-ECF participants listed below.

_____
[NAME]

NON-ECF PARTICIPANT COUNSEL OF RECORD (VIA U.S. MAIL)	
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U.S. DEPARTMENT OF JUSTICE (VIA U.S. MAIL AND EMAIL)	
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	Chief Process Supervisor: Bruce Robertson bkrobertson@yahoo.com GRANDVIEW ADVISORS 39 Wynford Drive Don Mills, Ontario M3C 3K5 Tel. (416) 816-8041 Fax (416) 446-0050

Exhibit C

Arctic Glacier International, Inc., Motion to Unseal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 1:09-cr-00149
	)	
Plaintiff,	)	Judge Herman J. Weber
	)	
v.	)	
	)	
ARCTIC GLACIER INTERNATIONAL, INC.,	)	
	)	
Defendant.	)	

VICTIMS' MOTION SEEKING ORDER TO UNSEAL GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE AND SEALED TRANSCRIPT

Lawrence Acker, Patrick Simasko and Wayne Stanford, who assert that they are victims of defendant's crime (the "Victims"), by and through their undersigned counsel, hereby move to unseal the Motion For A Downward Departure (Dkt. #36) and Sealed Transcript (Dkt. #48).

The grounds for the motion are set forth in the accompanying memorandum in support.

Respectfully submitted,

/s/ Matthew S. Wild

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MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

The Victims seek an order unsealing the Motion For Downward Departure (Dkt. #36) and Sealed Transcript (Dkt. #48) for use in advancing a proof of claim (the "Proof of Claim") filed in the CCAA Proceedings (as defined below) of Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International, Inc. (collectively, "Arctic"). The Proof of Claim is based on a putative class action captioned *In re Packaged Ice Antitrust* Litigation, No. 08-md-1952 (E.D. Mich.) (the "Damages Action"). In the Damages Action, Arctic denies that it committed any misconduct outside the geographic scope of its plea agreement in this case (*i.e.,* southeast Michigan, the "the Plea Area"). To obtain a downward departure, Arctic Glacier International, Inc. ("AG INT") was required to provide "substantial assistance" in the prosecution of a co-conspirator. *See, e.g., United States v. Lukse*, 286 F.3d 906, 912 (6th Cir. 2002) ("a finding of substantial assistance is a condition precedent to the filing of a motion. . . . For example, a motion may not be filed because of a conscious decision that substantial assistance has not been rendered."). The Victims believe that the motion and transcript would reveal material evidence that Arctic's conduct went beyond the Plea Area.

AG INT does not oppose this motion.[1] Moreover, the Victims' right of access to the sealed materials is guaranteed by the First Amendment, common right of access to judicial records and the Crime Victims' Rights Act ("CVRA"). With the criminal investigation long closed, there can be no compelling justification to maintain the motion and transcript under seal. Unsealing of the records furthers the public interest, however, because as the Sixth Circuit held,

---

[1] Arctic's counsel requested that Plaintiffs include a statement in this motion as follows: Although Arctic does not oppose this motion, it does not agree with the Plaintiffs' recitation of the facts and takes no position as to the soundness of their legal arguments, and does not waive any argument by agreeing not to oppose the motion.

"[i]t is clear that making records available to a party seeking to enforce the antitrust laws to prevent illegal price-setting practices is generally considered to be a matter in which the public has an interest." *Meyer Goldberg Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 162 (6th Cir. 1987).

II. BACKGROUND

The Victims allege that they purchased packaged ice produced by AG INT in the Detroit metropolitan area and paid artificially inflated prices. This Court has "afforded [the Victims] the status of crime victims" for the purpose of a challenge to AG INT's sentencing. *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010).

The Victims are also named plaintiffs in the Damages Action, in which they seek damages for AG INT's crime. The Damages Action seeks damages for an alleged nationwide cartel in which the plaintiffs in the Damages Action allege that Arctic, HCI and Reddy agreed not to compete with each other. Although AG INT and HCI pleaded guilty to a conspiracy involving territorial and/or customer allocations only in Southeast Michigan and the Detroit metropolitan area and Reddy was not prosecuted, the MDL Court held that the complaint alleges "enough factual content to plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and territories . . . and raises a reasonable expectation that discovery will reveal evidence of illegal agreement." *In re Packaged Ice Antitrust Litig.*, 723 F. Supp.2d 987, 1017 (E.D. Mich. 2010).

The MDL Court has given the direct purchaser plaintiffs access to certain similarly sealed material from the government investigation – tape recordings of conversations among the co-conspirators. The MDL Court held, "Plaintiffs have made that showing of substantial need" for the tape recordings. *In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 WL 1790189 at

* 9 (E.D. Mich. May 10, 2011). Petitioners are seeking access to that evidence from the court in the Damages Action.

In February 2012, Arctic and certain of its affiliates (collectively, the "Debtors") filed for bankruptcy protection in Canada and the United States. Although the Victim's action against the Debtors has been stayed, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has approved a stipulation by and between the Monitor, the Debtors, and the undersigned modifying the automatic stay to allow Plaintiffs to file this and certain other motions in certain civil and criminal cases concerning certain of the Debtors.

Pursuant to an order entered in the Canadian insolvency proceedings currently pending in the Court of Queen's Bench in Manitoba, Canada (the "CCAA Proceedings"), and as recognized and enforced in the United States by Order of the Bankruptcy Court, the Damages Action (as represented by the Proof of Claim)will be tried before a special claims officer, who is to be an agreed-upon attorney licensed in the United States with antitrust and class action experience.

Plaintiffs' counsel met and conferred with John Majoras, AG INT's counsel in this matter on March __, 2013. Mr. Majoras authorized Plaintiffs to state in this motion that AG INT does not oppose this motion. [Plaintiffs' counsel also conferred with _____ of the U.S. Department of Justice, and is also authorized to state in this motion that the Government does not object to this motion.]

III. ARGUMENT

A. The First Amendment Guarantees the Victims Access to the Motion for Downward Departure and Sealed Transcript

The First Amendment grants the public a right of access to sentencing proceedings. *In re: Hearst Newspapers, L.L.C.*, 641 F.3d 168 (5th Cir. 2011) (interpreting *Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555, 100 (1980)). *See e.g. United States v. Alcantara*, 396

F.3d 189, 196–99 (2d Cir. 2005) ("There is little doubt that the First Amendment right of access extends to sentencing proceedings . . ."); *CBS, Inc. v. United States Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985) ("The primary justifications for access to criminal proceedings . . . apply with as much force to post-conviction proceedings as to the trial itself."). Applying this principle, courts have consistently unsealed sentencing memoranda after the criminal case closed. *See e.g. United States v. Fretz*, No. 7:02-CR-67-1-F, 2012 Westlaw 1655412 at *3 (E.D.N.C. May 10, 2012) ("The motion for downward departure plainly is a document filed in connection with a sentencing hearing, and therefore the First Amendment presumption of access attaches to it."); *United States v. Dare*, 568 F.Supp.2d 242, 244 (N.D.N.Y. 2008) ("It is well-recognized that the public has a strong right to sentencing memoranda under the First Amendment."); *United States v. Taylor*, No. 5:07-CR-00123, 2008 Westlaw 161900 at *2 (S.D.W.Va. Jan. 15, 2008) (finding that the First Amendment presumption of right of access applies to sentencing memoranda).

Here, the criminal case is closed and the MDL Court has already given the direct purchaser plaintiffs' access to the government tape recordings, and AG INT does not oppose this motion. There is no basis to continue the seal in the criminal case.

B. The Crime Victims' Rights Act ("CVRA") Grants Petitioners a Right of Access to the Motion for Downward Departure And Sealed Transcript

The CVRA grants crime victims "the right to be treated with fairness," 18 U.S.C. § 3771(a)(8), and requires the Court to use its "best efforts" to afford this right. 18 U.S.C. § 3771(b). This right of fairness is not an empty promise, but rather is a substantive protection akin to due process rights. Senator Kyl, one of the CVRA's chief sponsors, explained in the CVRA's definitive legislative history that the right to fairness affords crime victims specific rights to due process in the criminal justice system:

The broad rights articulated in this section are meant to be rights themselves and

> are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process.... This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

150 CONG. REC. S10910 (daily ed. Oct. 9, 2004). Accordingly, courts should "promote a liberal reading of the statute in favor of interpretations that promote victims' interest in fairness, respect, and dignity." *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D.N.Y. 2005). This duty requires courts to apply the CVRA "liberally to the extent consistent with other law." *Id.*; *see also United States v. Patkar*, CR. 06-00250 JMS, 2008 WL 233062, *5 (D. Haw. Jan. 28, 2008). Denial of "the right to be treated with fairness . . . works a clearly defined and serious injury." *Id.*

The Sixth Circuit held that this right applies to unseal records in criminal cases. For example, in *In re Simons*, 567 F.3d 800 (6th Cir. 2009), a crime victim brought a motion to unseal the record. After three months without any decision by the District Court, the victim sought a writ of mandamus. Although such a delay would ordinarily not justify mandamus, the Sixth Circuit held that the delay violated the victim's "right to be treated with fairness and with respect for the victim's dignity," and granted the writ. *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009) (quoting 18 U.S.C. § 3771(a)(8)). The dissent took the majority's opinion further stating that justice required unsealing the record and that "further delay in unsealing the file . . . is entirely inappropriate and contrary to the purposes of the Crime Victims' Rights Act . . ." *Id.* at 802.

Fairness dictates that the motion and transcript should be unsealed and made available publicly so that the Victims may advance their proof of claim in the CCAA Proceedings.

IV. CONCLUSION

For the reasons stated above, the Court should unseal the motion for downward departure and the sealed transcript.

Respectfully submitted,

/s/ Matthew S. Wild

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Victims' Motion Seeking Order to Unseal Government's Motion for Downward Departure and Sealed Transcript has been served this X day of X, 2012, by email and regular U.S. Mail, on the following and at the following addresses:

(fill in)

Please include:

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Exhibit D

Larson Motion to Unseal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 1:09-cr-00147
	)	
Plaintiff,	)	Judge Herman J. Weber
	)	
	)	
v.	)	
	)	
FRANK G. LARSON,	)	
	)	
Defendant.	)	

VICTIMS' MOTION SEEKING ORDER TO UNSEAL GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE

Lawrence Acker, Patrick Simasko and Wayne Stanford, who assert that they are victims of defendant's crime (the "Victims"), by and through their undersigned counsel, hereby move to unseal the Motion For A Downward Departure (Dkt. #24).

The grounds for the motion are set forth in the accompanying memorandum in support.

Respectfully submitted,

/s/ Matthew S. Wild

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MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

The Victims seek an order unsealing the Motion For Downward Departure (Dkt. #24) for use in advancing a proof of claim (the "Proof of Claim") filed in the CCAA Proceedings (as defined below) of Arctic Glacier International, Inc. ("Arctic"). The Proof of Claim is based on a putative class action captioned *In re Packaged Ice Antitrust Litigation*, No. 08-md-1952 (E.D. Mich.) (the "Damages Action). In the Damages Action, Frank Larson's employer, Arctic, denies that it committed any misconduct outside the geographic scope of its plea agreement in this case (*i.e.*, southeast Michigan, the "the Plea Area"). To obtain a downward departure, however, Larson was required to provide "substantial assistance" in the prosecution of a co-conspirator. *See, e.g., United States v. Lukse*, 286 F.3d 906, 912 (6th Cir. 2002) ("a finding of substantial assistance is a condition precedent to the filing of a motion. . . . For example, a motion may not be filed because of a conscious decision that substantial assistance has not been rendered."). The Victims believe that the motion would reveal material evidence that Larson's and Arctic's conduct went beyond the Plea Area.

Mr. Larson does not oppose this motion.[1] The Victims believe that the motion for downward departure is likely to reveal such material evidence because Arctic pled guilty to conspiracy involving only a single co-conspirator, Home City Ice Company ("HCI"), yet was able to offer some form of cooperation. As HCI cooperated before Arctic did, Arctic's

[1] Mr. Larson has authorized John Majoras, Arctic's counsel of record in the case of *U.S. v. Arctic Glacier International, Inc.*, Case No. 09-cr-149 (S.D. Oh.), to represent him for the limited purpose of informing the Victims and this Court that Mr. Larson does not oppose this motion. Mr. Majoras also requested that a copy of this motion be served on Mr. Larson, which the Victims have done as provided in the Certificate of Service. Mr. Larson takes no position as to whether the Victims' recitation of the facts or their legal arguments are correct or have merit, and does not waive any argument by agreeing not to oppose the motion.

cooperation must have been against Reddy. As Reddy does no business in Michigan, Arctic must have been involved in illicit activity outside the Plea Area.

The Victims' right of access to the sealed materials is guaranteed by the First Amendment, common right of access to judicial records and the Crime Victims' Rights Act ("CVRA"). With the criminal investigation long closed, there can be no compelling justification to maintain the motion under seal. Unsealing of the records furthers the public interest, however, because as the Sixth Circuit held, "[i]t is clear that making records available to a party seeking to enforce the antitrust laws to prevent illegal price-setting practices is generally considered to be a matter in which the public has an interest." *Meyer Goldberg Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 162 (6th Cir. 1987).

II. BACKGROUND

The Victims allege that they purchased packaged ice produced by Arctic in the Detroit metropolitan area and paid artificially inflated prices. This Court has "afforded [the Victims] the status of crime victims" for the purpose of a challenge to Arctic's sentencing. *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010).

The Victims are also named plaintiffs in the Damages Action, a class action, entitled *In re Packaged Ice Antitrust Litig.*, 08-md-1952 (pending in the Eastern District of Michigan), in which they seek damages for Arctic's crime. The Damages Action seeks damages for an alleged nationwide cartel in which Arctic, HCI and Reddy agreed not to compete with each other. Although Arctic and HCI pleaded guilty to a conspiracy involving territorial and customer allocations only in Southeast Michigan and the Detroit metropolitan area and Reddy was not prosecuted, the MDL Court held, the complaint alleges "enough factual content to plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and

territories . . . and raises a reasonable expectation that discovery will reveal evidence of illegal agreement." *In re Packaged Ice Antitrust Litig.*, 723 F. Supp.2d 987, 1017 (E.D. Mich. 2010).

The MDL Court has given the direct purchaser plaintiffs access to the fruits of the government investigation – tape recordings of conversations among the co-conspirators. The MDL Court held, "Plaintiffs have made that showing of substantial need" for the tape recordings. *In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 WL 1790189 at * 9 (E.D. Mich. May 10, 2011). Petitioners do not yet have access to that evidence.

The government used the Damages Action to justify its failure to seek restitution in the criminal case. *See, e.g.,* Dkt. #11 (at ¶ 11)

In February 2012, Arctic and certain of its affiliates (collectively, the "Debtors") filed for bankruptcy protection in Canada and the United States. Although the Victim's action against the Debtors has been stayed, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has approved a stipulation by and between the Monitor, the Debtors, and the undersigned modifying the automatic stay to allow Plaintiffs to file this and other motions in certain civil and criminal cases concerning certain of the Debtors. *See* Ex. A.

Pursuant to an order entered in the Canadian insolvency proceedings currently pending in the Court of Queen's Bench in Manitoba, Canada (the "CCAA Proceedings"), and as recognized and enforced in the United States by Order of the Bankruptcy Court, the Damages Action (as represented by the Proof of Claim) will be tried before a special claims officer, who is to be an agreed-upon attorney licensed in the United States with antitrust and class action experience.

Plaintiffs' counsel met and conferred with John Majoras, who stated that he is authorized to represent Mr. Larson for the sole and limited purpose of informing the Victims and this Court that Mr. Larson does not oppose this motion, on March __, 2013. [Plaintiffs' counsel also

conferred with _____ of the U.S. Department of Justice, and is also authorized to state in this motion that the Government does not object to this motion.]

III. ARGUMENT

A. The First Amendment Guarantees the Victims Access to the Motion for Downward Departure

The First Amendment grants the public a right of access to sentencing proceedings. *In re: Hearst Newspapers, L.L.C.*, 641 F.3d 168 (5th Cir. 2011) (interpreting *Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555, 100 (1980)). *See e.g. United States v. Alcantara*, 396 F.3d 189, 196–99 (2d Cir. 2005) ("There is little doubt that the First Amendment right of access extends to sentencing proceedings . . ."); *CBS, Inc. v. United States Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985) ("The primary justifications for access to criminal proceedings . . . apply with as much force to post-conviction proceedings as to the trial itself."). Applying this principle, courts have consistently unsealed sentencing memoranda after the criminal case closed. *See e.g. United States v. Fretz*, No. 7:02-CR-67-1-F, 2012 Westlaw 1655412 at *3 (E.D.N.C. May 10, 2012) ("The motion for downward departure plainly is a document filed in connection with a sentencing hearing, and therefore the First Amendment presumption of access attaches to it."); *United States v. Dare*, 568 F.Supp.2d 242, 244 (N.D.N.Y. 2008) ("It is well-recognized that the public has a strong right to sentencing memoranda under the First Amendment."); *United States v. Taylor*, No. 5:07-CR-00123, 2008 Westlaw 161900 at *2 (S.D.W.Va. Jan. 15, 2008) (finding that the First Amendment presumption of right of access applies to sentencing memoranda).

Here, the criminal case is closed and the MDL Court has already given the direct purchaser plaintiffs access to the government tape recordings. There is no basis to continue the seal in the criminal case.

B. The Crime Victims' Rights Act ("CVRA") Grants Petitioners a Right of Access to the Motion for Downward Departure

The CVRA grants crime victims "the right to be treated with fairness," 18 U.S.C. § 3771(a)(8), and requires the Court to use its "best efforts" to afford this right. 18 U.S.C. § 3771(b). This right of fairness is not an empty promise, but rather is a substantive protection akin to due process rights. Senator Kyl, one of the CVRA's chief sponsors, explained in the CVRA's definitive legislative history that the right to fairness affords crime victims specific rights to due process in the criminal justice system:

> The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process.... This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

150 CONG. REC. S10910 (daily ed. Oct. 9, 2004). Accordingly, courts should "promote a liberal reading of the statute in favor of interpretations that promote victims' interest in fairness, respect, and dignity." *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D.N.Y. 2005). This duty requires courts to apply the CVRA "liberally to the extent consistent with other law." *Id.*; *see also United States v. Patkar*, CR. 06-00250 JMS, 2008 WL 233062, *5 (D. Haw. Jan. 28, 2008). Denial of "the right to be treated with fairness . . . works a clearly defined and serious injury." *Id.*

The Sixth Circuit held that this right applies to unseal records in criminal cases. For example, in *In re Simons*, 567 F.3d 800 (6th Cir. 2009), a crime victim brought a motion to unseal the record. After three months without any decision by the District Court, the victim sought a writ of mandamus. Although such a delay would ordinarily not justify mandamus, the Sixth Circuit held that the delay violated the victim's "right to be treated with fairness and with

respect for the victim's dignity," and granted the writ. *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009) (quoting 18 U.S.C. § 3771(a)(8)). The dissent took the majority's opinion further stating that justice required unsealing the record and that "further delay in unsealing the file . . . is entirely inappropriate and contrary to the purposes of the Crime Victims' Rights Act . . ." *Id.* at 802.

Fairness dictates that the motion should be unsealed and made available publicly so that the Victims may advance their proof of claim in the CCAA Proceedings.

IV. CONCLUSION

For the reasons stated above, the Court should unseal the motion for downward departure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Victims' Motion Seeking Order to Unseal the Government's Motion for Downward Departure has been served this X day of X, 2012, by email and regular U.S. Mail, on the following and at the following addresses: (fill in)

Please include:

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Exhibit E

Cooley Motion to Unseal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 1:09-cr-00148
	)	
Plaintiff,	)	Judge Herman J. Weber
	)	
v.	)	
	)	
GARY D. COOLEY,	)	
	)	
Defendant.	)	

VICTIMS' MOTION SEEKING ORDER TO UNSEAL GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE

Lawrence Acker, Patrick Simasko and Wayne Stanford, who assert that they are victims of defendant's crime (the "Victims"), by and through their undersigned counsel, hereby move to unseal the Motion For A Downward Departure (Dkt. #22).

The grounds for the motion are set forth in the accompanying memorandum in support.

Respectfully submitted,

/s/ Matthew S. Wild

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MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

The Victims seek an order unsealing the Motion For Downward Departure (Dkt. #22) for use in advancing a proof of claim (the "Proof of Claim") filed in the CCAA Proceedings (as defined below) of Arctic Glacier International, Inc. ("Arctic"). The Proof of Claim is based on a putative class action captioned *In re Packaged Ice Antitrust Litigation*, No. 08-md-1952 (E.D. Mich.) (the "Damages Action"). In the Damages Action, Gary Cooley's employer, Arctic, denies that it committed any misconduct outside the geographic scope of the plea agreement in this case (*i.e.,* southeast Michigan, "the Plea Area"). To obtain a downward departure, however, Cooley was required to provide "substantial assistance" in the prosecution of a co-conspirator. *See, e.g., United States v. Lukse*, 286 F.3d 906, 912 (6th Cir. 2002) ("a finding of substantial assistance is a condition precedent to the filing of a motion. . . . For example, a motion may not be filed because of a conscious decision that substantial assistance has not been rendered."). The Victims believe that the motion would reveal material evidence that Cooley's and Arctic's conduct went beyond the Plea Area.

Mr. Cooley does not oppose this motion.[1] The Victims believe that the motion for downward departure is likely to reveal such material evidence because Arctic pled guilty to conspiracy involving only a single co-conspirator, Home City Ice Company ("HCI"), yet was able to offer some form of cooperation. As HCI cooperated before Arctic did, the Victims

[1] Mr. Cooley has authorized John Majoras, Arctic's counsel of record in the case of *U.S. v. Arctic Glacier International, Inc.*, Case No. 09-cr-149 (S.D. Oh.), to represent him for the limited purpose of informing the Victims and this Court that Mr. Cooley does not oppose this motion. Mr. Majoras also requested that a copy of this motion be served on Mr. Cooley, which the Victims have done as provided in the Certificate of Service. Mr. Cooley takes no position as to whether the Victims' recitation of the facts or their legal arguments are correct or have merit, and does not waive any argument by agreeing not to oppose the motion.

believe that cooperation must have been against Reddy. As Reddy does no business in Michigan, Arctic must have been involved in illicit activity outside the Plea Area.

The Victims' right of access to the sealed materials is guaranteed by the First Amendment, common right of access to judicial records and the Crime Victims' Rights Act ("CVRA"). With the criminal investigation long closed, there can be no compelling justification to maintain the motion under seal. Unsealing of the records furthers the public interest, however, because as the Sixth Circuit held, "[i]t is clear that making records available to a party seeking to enforce the antitrust laws to prevent illegal price-setting practices is generally considered to be a matter in which the public has an interest." *Meyer Goldberg Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 162 (6th Cir. 1987).

II. BACKGROUND

The Victims allege that they purchased packaged ice produced by Arctic in the Detroit metropolitan area and paid artificially inflated prices. This Court has "afforded [the Victims] the status of crime victims" for the purpose of a challenge to Arctic's sentencing. *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010).

The Victims are also named plaintiffs in the Damages Action, a class action, entitled *In re Packaged Ice Antitrust Litig.*, 08-md-1952 (pending in the Eastern District of Michigan), in which they seek damages for Arctic's crime. The Damages Action seeks damages for an alleged nationwide cartel in which Arctic, HCI and Reddy agreed not to compete with each other. Although Arctic and HCI pleaded guilty to a conspiracy involving territorial and customer allocations only in Southeast Michigan and the Detroit metropolitan area and Reddy was not prosecuted, the MDL Court held, the complaint alleges "enough factual content to plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and

territories . . . and raises a reasonable expectation that discovery will reveal evidence of illegal agreement." *In re Packaged Ice Antitrust Litig.*, 723 F. Supp.2d 987, 1017 (E.D. Mich. 2010).

The MDL Court has given the direct purchaser plaintiffs access to the fruits of the government investigation – tape recordings of conversations among the co-conspirators. The MDL Court held, "Plaintiffs have made that showing of substantial need" for the tape recordings. *In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 WL 1790189 at * 9 (E.D. Mich. May 10, 2011). Petitioners do not yet have access to that evidence.

The government used the Damages Action to justify its failure to seek restitution in the criminal case. *See, e.g.,* Dkt. #11 (at ¶ 11)

In February 2012, Arctic and certain of its affiliates (collectively, the "Debtors") filed for bankruptcy protection in Canada and the United States. Although the Victim's action against the Debtors has been stayed, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has approved a stipulation by and between the Monitor, the Debtors, and the undersigned modifying the automatic stay to allow Plaintiffs to file this and other motions in certain civil and criminal cases concerning certain of the Debtors. *See* Ex. A.

Pursuant to an order entered in the Canadian insolvency proceedings currently pending in the Court of Queen's Bench in Manitoba, Canada (the "CCAA Proceedings"), and as recognized and enforced in the United States by Order of the Bankruptcy Court, the Damages Action (as represented by the Proof of Claim) will be tried before a special claims officer, who is to be an agreed-upon attorney licensed in the United States with antitrust and class action experience.

Plaintiffs' counsel met and conferred with John Majoras, who stated that he is authorized to represent Mr. Cooley for the sole and limited purpose of informing the Victims and this Court that Mr. Cooley does not oppose this motion, on March __, 2013. [Plaintiffs' counsel also

conferred with _____ of the U.S. Department of Justice, and is also authorized to state in this motion that the Government does not object to this motion.]

III. ARGUMENT

A. The First Amendment Guarantees the Victims Access to the Motion for Downward Departure

The First Amendment grants the public a right of access to sentencing proceedings. *In re: Hearst Newspapers, L.L.C.*, 641 F.3d 168 (5th Cir. 2011) (interpreting *Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555, 100 (1980)). *See e.g. United States v. Alcantara*, 396 F.3d 189, 196–99 (2d Cir. 2005) ("There is little doubt that the First Amendment right of access extends to sentencing proceedings . . ."); *CBS, Inc. v. United States Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985) ("The primary justifications for access to criminal proceedings . . . apply with as much force to post-conviction proceedings as to the trial itself."). Applying this principle, courts have consistently unsealed sentencing memoranda after the criminal case closed. *See e.g. United States v. Fretz*, No. 7:02-CR-67-1-F, 2012 Westlaw 1655412 at *3 (E.D.N.C. May 10, 2012) ("The motion for downward departure plainly is a document filed in connection with a sentencing hearing, and therefore the First Amendment presumption of access attaches to it."); *United States v. Dare*, 568 F.Supp.2d 242, 244 (N.D.N.Y. 2008) ("It is well-recognized that the public has a strong right to sentencing memoranda under the First Amendment."); *United States v. Taylor*, No. 5:07-CR-00123, 2008 Westlaw 161900 at *2 (S.D.W.Va. Jan. 15, 2008) (finding that the First Amendment presumption of right of access applies to sentencing memoranda).

Here, the criminal case is closed and the MDL Court has already given the direct purchaser plaintiffs access to the government tape recordings. There is no basis to continue the seal in the criminal case.

B. The Crime Victims' Rights Act ("CVRA") Grants Petitioners a Right of Access to the Motion for Downward Departure

The CVRA grants crime victims "the right to be treated with fairness," 18 U.S.C. § 3771(a)(8), and requires the Court to use its "best efforts" to afford this right. 18 U.S.C. § 3771(b). This right of fairness is not an empty promise, but rather is a substantive protection akin to due process rights. Senator Kyl, one of the CVRA's chief sponsors, explained in the CVRA's definitive legislative history that the right to fairness affords crime victims specific rights to due process in the criminal justice system:

> The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process.... This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

150 CONG. REC. S10910 (daily ed. Oct. 9, 2004). Accordingly, courts should "promote a liberal reading of the statute in favor of interpretations that promote victims' interest in fairness, respect, and dignity." *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D.N.Y. 2005). This duty requires courts to apply the CVRA "liberally to the extent consistent with other law." *Id.*; *see also United States v. Patkar*, CR. 06-00250 JMS, 2008 WL 233062, *5 (D. Haw. Jan. 28, 2008). Denial of "the right to be treated with fairness . . . works a clearly defined and serious injury." *Id.*

The Sixth Circuit held that this right applies to unseal records in criminal cases. For example, in *In re Simons*, 567 F.3d 800 (6th Cir. 2009), a crime victim brought a motion to unseal the record. After three months without any decision by the District Court, the victim sought a writ of mandamus. Although such a delay would ordinarily not justify mandamus, the Sixth Circuit held that the delay violated the victim's "right to be treated with fairness and with

respect for the victim's dignity," and granted the writ. *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009) (quoting 18 U.S.C. § 3771(a)(8)). The dissent took the majority's opinion further stating that justice required unsealing the record and that "further delay in unsealing the file . . . is entirely inappropriate and contrary to the purposes of the Crime Victims' Rights Act . . ." *Id.* at 802.

Fairness dictates that the motion should be unsealed and made available publicly so that the Victims may advance their proof of claim in the CCAA Proceedings.

IV. CONCLUSION

For the reasons stated above, the Court should unseal the motion for downward departure.

Respectfully submitted,

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Max Wild
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(914) 630-7500

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Victims' Motion Seeking Order to Unseal the Government's Motion for Downward Departure has been served this X day of X, 2012, by email and regular U.S. Mail, on the following and at the following addresses: (fill in)

Please include:

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(202) 879-7652

Gary Cooley
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Exhibit F

Home City Ice Company Motion to Unseal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 1:07-cr-00140
	)	
Plaintiff,	)	Judge Herman J. Weber
	)	
	)	
v.	)	
	)	
THE HOME CITY ICE COMPANY	)	
	)	
Defendant.	)	

VICTIMS' MOTION SEEKING ORDER TO UNSEAL GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE

Lawrence Acker, Patrick Simasko and Wayne Stanford, who assert that they are victims of defendant's crime (the "Victims"), by and through their undersigned counsel, hereby move to unseal the Motion For A Downward Departure (Dkt. #34).

The grounds for the motion are set forth in the accompanying memorandum in support.

Respectfully submitted,

/s/ Matthew S. Wild

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(914) 630-7500

MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

The Victims seek an order unsealing the Motion For Downward Departure (Dkt. #34) for use in advancing a proof of claim (the "Proof of Claim") filed in the CCAA Proceeding (as defined below) of Arctic Glacier International, Inc. ("Arctic"). The Proof of Claim is based on a putative class action captioned *In re Packaged Ice Antitrust Litigation*, No. 08-md-1952 (E.D. Mich.) (the "Damages Action"). In the Damages Action, Arctic denies that it committed any misconduct outside the geographic scope of the plea agreement (*i.e.,* southeast Michigan) ("the Plea Area"). To obtain a downward departure, however, The Home City Ice Co. ("HCI") was required to provide "substantial assistance" in the prosecution of a co-conspirator. *See, e.g., United States v. Lukse*, 286 F.3d 906, 912 (6th Cir. 2002) ("a finding of substantial assistance is a condition precedent to the filing of a motion. . . . For example, a motion may not be filed because of a conscious decision that substantial assistance has not been rendered."). The Victims believe, based on information available in the Damages Action, that HCI's cooperation may have provided evidence that the conspiracy involved Reddy and Arctic and was nationwide in geographic scope.

HCI [opposes/does not oppose] this motion.[1] The Victims' right of access to the sealed materials is guaranteed by the First Amendment, common right of access to judicial records and the Crime Victims' Rights Act ("CVRA"). With the criminal investigation long closed, there can be no compelling justification to maintain the confidentiality of the motion. Unsealing of the records furthers the public interest, moreover, because as the Sixth Circuit held, "[i]t is clear that making records available to a party seeking to enforce the antitrust laws to prevent illegal price-

[1] HCI's counsel does not oppose this motion, but does not agree with the Plaintiffs' recitation of the facts and takes no position as to the soundness of their legal arguments, and does not waive any argument by agreeing not to oppose the motion.

setting practices is generally considered to be a matter in which the public has an interest." *Meyer Goldberg Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 162 (6th Cir. 1987).

II. BACKGROUND

The Victims allege that they purchased packaged ice produced by Arctic (HCI's coconspirator) in the Detroit metropolitan area and paid artificially inflated prices. This Court has "afforded [the Victims] the status of crime victims" for the purpose of a challenge to Arctic's sentencing. *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010).

The Victims are also named plaintiffs in the Damages Action, a class action, entitled *In re Packaged Ice Antitrust Litig.*, 08-md-1952 (pending in the Eastern District of Michigan), in which they seek restitution for Arctic's crime. The Damages Action seeks damages for a nationwide cartel in which Arctic, HCI and Reddy agreed not to compete with each other. Although Arctic and HCI pleaded guilty to a conspiracy involving territorial and customer allocations only in Southeast Michigan and the Detroit metropolitan area and Reddy was not prosecuted, the MDL Court held, the complaint alleges "enough factual content to plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and territories . . . and raises a reasonable expectation that discovery will reveal evidence of illegal agreement." *In re Packaged Ice Antitrust Litig.*, 723 F. Supp.2d 987, 1017 (E.D. Mich. 2010).

The MDL Court has given the direct purchaser plaintiffs access to some of the fruits of HCI's cooperation – tape recordings of conversations among the co-conspirators. The MDL Court held, "Plaintiffs have made that showing of substantial need" for the tape recordings. *In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 WL 1790189 at * 9 (E.D. Mich. May 10, 2011). Petitioners do not yet have access to that evidence.

The government used the Damages Action to justify its failure to seek restitution in the criminal case. *See, e.g.*, Dkt. #11 (at ¶ 11)

Pursuant to an order entered in the Canadian insolvency proceedings currently pending in the Court of Queen's Bench in Manitoba, Canada (the "CCAA Proceedings"), and as recognized and enforced in the United States by Order of the U.S. Bankrupty Court for the District of Delaware, the Damages Action (as represented by the Proof of Claim) will be tried before a special claims officer, who is to be an agreed-upon attorney licensed in the United States with antitrust and class action experience.

III. ARGUMENT

A. The First Amendment Guarantees the Victims Access to the Motion for Downward Departure

The First Amendment grants the public a right of access to sentencing proceedings. *In re: Hearst Newspapers, L.L.C.*, 641 F.3d 168 (5th Cir. 2011) (interpreting *Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555, 100 (1980)). *See e.g. United States v. Alcantara*, 396 F.3d 189, 196–99 (2d Cir. 2005) ("There is little doubt that the First Amendment right of access extends to sentencing proceedings . . ."); *CBS, Inc. v. United States Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985) ("The primary justifications for access to criminal proceedings . . . apply with as much force to post-conviction proceedings as to the trial itself."). Applying this principle, courts have consistently unsealed sentencing memoranda after the criminal case closed. *See e.g. United States v. Fretz*, No. 7:02-CR-67-1-F, 2012 Westlaw 1655412 at *3 (E.D.N.C. May 10, 2012) ("The motion for downward departure plainly is a document filed in connection with a sentencing hearing, and therefore the First Amendment presumption of access attaches to it."); *United States v. Dare*, 568 F.Supp.2d 242, 244 (N.D.N.Y. 2008) ("It is well-recognized that the public has a strong right to sentencing memoranda under the First Amendment."); *United States*

v. Taylor, No. 5:07-CR-00123, 2008 Westlaw 161900 at *2 (S.D.W.Va. Jan. 15, 2008) (finding that the First Amendment presumption of right of access applies to sentencing memoranda).

Here, the criminal case is closed and the MDL Court has already given the direct purchaser plaintiffs access to HCI's and others' tape recordings made at the government's behest. There is no basis to continue the seal in the criminal case.

B. The Crime Victims' Rights Act ("CVRA") Grants Petitioners a Right of Access to the Motion for Downward Departure

The CVRA grants crime victims "the right to be treated with fairness," 18 U.S.C. § 3771(a)(8), and requires the Court to use its "best efforts" to afford this right. 18 U.S.C. § 3771(b). This right of fairness is not an empty promise, but rather is a substantive protection akin to due process rights. Senator Kyl, one of the CVRA's chief sponsors, explained in the CVRA's definitive legislative history that the right to fairness affords crime victims specific rights to due process in the criminal justice system:

> The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process.... This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

150 CONG. REC. S10910 (daily ed. Oct. 9, 2004). Accordingly, courts should "promote a liberal reading of the statute in favor of interpretations that promote victims' interest in fairness, respect, and dignity." *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D.N.Y. 2005). This duty requires courts to apply the CVRA "liberally to the extent consistent with other law." *Id.*; *see also United States v. Patkar*, CR. 06-00250 JMS, 2008 WL 233062, *5 (D. Haw. Jan. 28, 2008). Denial of "the right to be treated with fairness . . . works a clearly defined and serious injury." *Id.*

The Sixth Circuit held that this right applies to unseal records in criminal cases. For example, in *In re Simons*, 567 F.3d 800 (6th Cir. 2009), a crime victim brought a motion to unseal the record. After three months without any decision by the District Court, the victim sought a writ of mandamus. Although such a delay would ordinarily not justify mandamus, the Sixth Circuit held that the delay violated the victim's "right to be treated with fairness and with respect for the victim's dignity," and granted the writ. *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009) (quoting 18 U.S.C. § 3771(a)(8)). The dissent took the majority's opinion further stating that justice required unsealing the record and that "further delay in unsealing the file . . . is entirely inappropriate and contrary to the purposes of the Crime Victims' Rights Act . . ." *Id.* at 802.

HCI [does not oppose/opposes] this motion. Fairness dictates that the motion should be unsealed and made available publicly so that the Victims may advance their proof of claim in the CCAA Proceedings.

IV. CONCLUSION

For the reasons stated above, the Court should unseal the motion for downward departure.

Respectfully submitted,

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Max Wild
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Warwick, NY 10990
(914) 630-7500

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Victims' Motion Seeking Order to Unseal Defendant's Motion for Downward Departure and Search Warrant Application and Memoranda has been served this X day of X, 2012, by email and regular U.S. Mail, on the following and at the following addresses:

(fill in)

Please include:

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Gary Cooley
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Exhibit G

Motion to Unseal Search Warrant Application

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: LAWRENCE ACKER; PATRICK SIMASKO; WAYNE STANFORD; BRIAN BUTTARS; BRANDI PALOMBELLA; LEHOMA GOODE; IAN GROVES; NATHAN CROOM; KAREN PRENTICE; JAMES FEENEY; BEVERLY HERRON; ROBERT DELOSS; JOE SWEENEY; JOHN SPELLMEYER; SAMUEL WINNIG; AND ANELLO MANCUSI	§	Case No. 3:08-MJ-68
	§	13-Civ.-
Petitioners.	§	

MOTION FOR RELIEF UNDER THE CRIME VICTIMS' RIGHTS ACT
AND PETITION TO UNSEAL SEARCH WARRANT APPLICATION

The above-named Petitioners (hereinafter the "victims") respectfully submit this motion and petition to unseal the application for a search warrant issued on or about March 7, 2008 authorizing the search of Reddy Ice Corporation's Dallas headquarters. In support thereof, the victims rely upon the grounds set forth in the accompanying memorandum of law.

Respectfully submitted,

/s/ E. P. Keiffer

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Attorneys for the Victims

CERTIFICATE OF SERVICE

This confirms that the foregoing was served on the attached list via U.S. Mail on this 8th day of March, via this Court's CM/ECF system.

/s/ E. P. Keiffer
E. P. Keiffer

Exhibit H

Brief in Support of Motion to Unseal Search Warrant Application

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: LAWRENCE ACKER; PATRICK SIMASKO; WAYNE STANFORD; BRIAN BUTTARS; BRANDI PALOMBELLA; LEHOMA GOODE; IAN GROVES; NATHAN CROOM; KAREN PRENTICE; JAMES FEENEY; BEVERLY HERRON; ROBERT DELOSS; JOE SWEENEY; JOHN SPELLMEYER; SAMUEL WINNIG; AND ANELLO MANCUSI	§	Case No. 3:08-MJ-68
	§	13-Civ.-
Petitioners.	§	

BRIEF IN SUPPORT OF MOTION FOR RELIEF UNDER THE CRIME VICTIMS' RIGHTS ACT AND PETITION TO UNSEAL SEARCH WARRANT APPLICAITON

PRELIMINARY STATEMENT

Petitioners (hereinafter "victims") allege that they are victims of antitrust violations, including unlawful conduct in southeastern Michigan to which The Home City Ice Company, Arctic Glacier International Inc. ("Arctic"), and three individuals pled guilty and Reddy Ice Corporation ("Reddy") allegedly participated. They respectfully submit this memorandum in support of their application to unseal the affidavit submitted in support of issuance of the search warrant, which authorized a search of Reddy's Dallas headquarters. Like other members of the public, the victims are entitled to see the affidavit under the First Amendment, the common law right of access to judicial records, and the Crime Victims' Rights Act (the "CVRA"). As described in more detail below, the victims have a compelling need to see the affidavit, as it may lead them to crucial evidence supporting their proof of claim, which was filed in a Canadian insolvency proceeding, commenced under Canada's Companies' Creditors Arrangement Act, of Arctic Glacier Income Fund, *et al.* (collectively, the "Debtors"), pending in the Court of Queen's

Bench of Manitoba, Canada. The proof of claim is based on their civil antitrust case for restitution against Arctic.

With the criminal investigation concluded long ago (and the statute of limitations seemingly having long since expired), there is no countervailing justification to deprive victims of this material. Unsealing is therefore required because "no court has ruled that search warrant applications may be sealed indefinitely after the investigation comes to a close. On the contrary, sealing of search warrant affidavits is 'an extraordinary action' to be taken only in exceptional cases." *In re Sealing and Non-disclosure of Pen/Trap/2703(d) Orders*, 562 F. Supp.2d 876, 892 (S.D. Tex. 2008). Access to this material vindicates the public interest because "[i]t is clear that making records available to a party seeking to enforce the antitrust laws to prevent illegal price-setting practices is generally considered to be a matter in which the public has an interest." *Meyer Goldberg Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 162 (6th Cir. 1987).

STATEMENT OF FACTS

According to press reports, this Court issued a warrant in March 2008 that authorized the search of Reddy's headquarters – a publicly traded company located in Dallas. Reddy – a manufacturer of packaged ice – was under investigation for criminally conspiring with two of its competitors, Arctic and Home City, to carve the country into three territories (one for each) and not compete with each other. Of course, such a naked agreement not to compete is a crime under § 1 of the Sherman Act (15 U.S.C. § 1). To establish probable cause, the search warrant application must have contained a sworn declaration that set forth with particularity the evidence that Reddy participated in the conspiracy.

Victims are named plaintiffs in a class action that seeks redress for these companies' conduct. *See In re Packaged Ice Antitrust Litig.*, 08-md-1952 (E.D. Mich.) (the "Restitution

Action" in the Civil Court). They allege that they purchased packaged ice throughout the country and paid artificially inflated prices because of these companies' price-fixing and territorial allocation conspiracy. They have since filed a $460,000,000 proof of claim in Arctic's Canadian insolvency proceeding. Victims seek the search warrant application as it may contain crucial evidence of the scope of the conspiracy. In particular, Arctic maintains that it committed no illegal conduct outside the limited scope of its guilty plea – Southeast Michigan. Reddy does no business in Southeast Michigan. The victims believe that issuance of the search warrant by this Court in the Northern District of Texas therefore seriously undermines Arctic's contention. Unless any conduct for which Reddy was investigated was committed elsewhere than Southeast Michigan, the victims believe that there would have been no basis for issuance of the warrant to a competitor that does no business in Michigan.[1]

The Civil Court has previously compelled the government to disclose fruits of investigation, namely tape recordings between government informants (including Gary Mowery, Martin McNulty and Ted Sedler) and alleged members of the conspiracy (including Ben Key – a former Reddy corporate officer – Gary Cooley, Frank Larson and Keith Corbin), *See In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 WL 1790189, *8 (E.D. Mich. May 10, 2011) (citation omitted). Presumably, these recordings formed part of the basis for issuance of the search warrant.

ARCTIC'S INSOLVENCY PROCEEDINGS

[1] Although Arctic and Home City pleaded guilty to a conspiracy involving territorial and customer allocations only in Southeast Michigan and Reddy was not prosecuted, the Civil Court held that the complaint alleges "enough factual content to plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and territories . . . and raises a reasonable expectation that discovery will reveal evidence of illegal agreement." *In re Packaged Ice Antitrust Litig.*, 723 F. Supp.2d 987, 1017 (E.D. Mich. 2010). The Civil Court gave no weight to the government's failure to prosecute Reddy in deciding that the victims could take discovery on their claims, including against Reddy, holding "there are a multitude of reasons why the government in a criminal investigation may limit or curtail its investigation, including the possibility that civil enforcement will step in where it decides, or is compelled, to conclude." *Id.*, at 1012.

In February 2012, Arctic and certain of its affiliates (collectively, the "Debtors") commenced proceedings under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended before the Manitoba Court of the Queen's Bench of Winnipeg Centre (the "Canadian Court"), File No. CI 12-01 76323 (the "Canadian Proceeding"). The U.S. Bankruptcy Court for the District of Delaware (the "Delaware Court") has recognized the Canadian Proceeding as a "foreign main proceeding" pursuant to chapter 15 of title 11 of the United States Code. Pursuant to that statute, an automatic stay supervised by the Delaware Court prevents the commencement or continuation in the U.S. of any action against the Debtors or any attempted actions against the Debtors' U.S. property.

On September 5, 2012, the Canadian Court entered the Claims Procedure Order (the "Claims Procedure Order") establishing procedures for the submission and determination of claims against the Debtors and their directors, officers, and trustees (the "Claims Process"). On September 14, 2012, the Delaware Court entered the Order Recognizing and Enforcing the Claims Procedure Order of the Canadian Court recognizing and giving full force and effect in the United States to the Claims Procedure Order. As such, the claims brought by the victims are no longer subject to the Civil Court's jurisdiction because they are being determined in the Canadian Proceeding pursuant to the Claims Process.

In accordance with the Claims Process, the victims have submitted a proof of claim for the relief they had previously sought in the Civil Court. Although the Restitution Action against the Debtors has been stayed in the Civil Court by operation of the automatic stay, the Delaware Court has approved a stipulation, among Alvarez & Marsal Canada Inc., in its capacity as the Canadian Court-appointed monitor and authorized foreign representative of the Debtors, the Debtors, and the victims, modifying the automatic stay to allow the victims to file this and other

motions in certain civil and criminal cases concerning certain of the Debtors. The purpose of the stipulation was to permit the victims to petition the relevant U.S. courts for access to evidence that they believe will support their proof of claim in the Claims Process.

ARGUMENT

I. The Victims Have a Right to the Search Warrant Affidavit Under a Common Law Right of Access and a First Amendment Right of Access.

The victims have a right to the search warrant application under the common law right of access to judicial records and the First Amendment. Recognizing that "no court has ruled that search warrant applications may be sealed indefinitely after the investigation comes to a close," *In re Sealing and Non-disclosure of Pen/Trap/2703(d) Orders*, 562 F. Supp.2d at 892, courts have consistently held that a common law right attaches to search warrant applications. Accordingly, "[i]n the post-investigation context, warrant materials have generally been open to the public." *United States v. Bus. of Custer Battlefield Museum and Store Located at Interstate 90, Exit 514, South of Billings, Mont.*, 658 F.3d 1188, 1194. (9th Cir. 2011). *See also Balt. Sun Co. v. Goetz*, 886 F.2d 60, 65 (4th Cir. 1989) (same).

The common law right to judicial records emphasizes the importance of transparency in the criminal justice system. *See, e.g., Bus. of Custer Battlefield Museum and Store Located at Interstate 90, Exit 514, South of Billings, Mont.*, 658 F.3d at 1194-1195; *Balt. Sun Co., id.* Accordingly, there is a "strong presumption in favor of access." *See, e.g., Bus. of Custer Battlefield Museum and Store Located at Interstate 90, Exit 514, South of Billings, Mont.*, 658 F.3d at 1194 (citation omitted). To deny access, the Court must "base its decision on compelling reasons and articulate the factual basis for its ruling without relying on hypothesis or conjecture." *Id.*, 658 F.3d at 1995 (citation omitted). *See also Balt. Sun Co.*, 868 F.2d at 65-66 ("The judicial officer may deny access when sealing is essential . . . and is narrowly tailored") (citation

omitted). Compliance with the requirement that the sealing is "narrowly tailored" "ordinarily involved disclosing some of the documents or giving access to a redacted version of the affidavit." *Id.*, 868 F.2d at 66.[2]

It is important to emphasize that the government can have no legitimate interest in continuing to maintain a seal on the search warrant affidavit. It appears that the affidavit was placed under seal some sixty months ago. While the government may have an interest in placing a search warrant under seal while its investigation is in its infancy, at some point that interest evaporates. Certainly in this case, where the defendants such as Reddy and Arctic have long ago been made aware of the government's criminal investigation, any interest in keeping the affidavit under seal has disappeared. Indeed, the five-year statute of limitations seems to have long since run. 18 U.S.C. § 1349.[3]

While the government has no real interest in continuing to keep the affidavit under seal, the victims have a compelling need for access to the affidavit. As explained above, the victims are attempting to advance their proof of claim in the Canadian Proceeding. The affidavit may well contain important information that will help them advance such proof of claim. Any balancing of interests tips decisively in their favor and, accordingly, the affidavit should be unsealed.

Finally, it should be noted that the victims only seek those parts of the affidavit that are relevant to their proof of claim – specifically those parts of the affidavit that show the full scope

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[2] Consistent with the common law right to judicial records, including search warrant applications after the investigation and criminal case have concluded, the First Amendment likewise guarantees the victims access to this material. *See, e.g., In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988); *United States v. Loughner*, 769 F. Supp.2d 1188, 1193–94 (D. Ariz. 2011) ("The Court is persuaded by the clear trend among the states during the past 30 years that experience supports finding a qualified First Amendment right of access to search warrant materials once the investigation has concluded and a final indictment has issued . . . Logic also supports openness and disclosure at this stage.").

[3] The search warrant application also should be unsealed consistent with Local Criminal Rule of Procedure 55.4, which provides that when there has been a "final disposition" of a criminal case, all documents maintained on paper will be deemed unsealed after 60 days.

of the conduct that the government was investigating. To the extent that there are other, limited parts of the affidavit that do not bear on the scope of the conduct or are otherwise irrelevant to the proof of claim, the victims would have no objection to that limited part of the affidavit being redacted. *See, e.g., Balt. Sun Co.*, 868 F.2d at 66; *United States v. All Funds on Deposit at Wells Fargo Bank in San Francisco, California, in Account No. 7986104185, Held in the Name of Account Services Inc., & All Prop. Traceable Thereto*, 643 F. Supp. 2d 577, 586 (S.D.N.Y. 2009) ("although the complete versions of the documents will remain under seal pending further order of the Court, redacted versions of the warrant affidavits . . . will be placed in the Court's public file").

II. THE CRIME VICTIMS' RIGHTS ACT REQUIRES UNSEALING THE SEARCH WARRANT AFFIDAVIT

The victims also have a right to the affidavit under the Crime Victims' Rights Act. Specifically, the CVRA promises crime victims the "right to be treated with fairness." 18 U.S.C. § 3771(a)(8). It is hardly treating the victims with fairness to allow the government to maintain a seal on information that could help them advance their proof of claim in the Canadian Proceeding. Indeed, the CVRA obligates the government to use its "best efforts" to protect victims' rights. If anything, the government should be helping the victims obtain access to the affidavit. Accordingly the affidavit should be unsealed for this reason as well.

A. The CVRA's Right to "Be Treated with Fairness" Means that the Victims Must Have Access to the Search Warrant Affidavit.

On the particular facts of this case, the victims have a CVRA right to the affidavit. The CVRA grants crime victims "the right to be treated with fairness," 18 U.S.C. § 3771(a)(8), and requires the Court "shall ensure" that victims are afforded their rights. 18 U.S.C. § 3771(b)(1). This right of fairness is not an empty promise, but rather is a substantive protection akin to due

process rights. Senator Kyl, one of the CVRA's chief sponsors, explained in the CVRA's definitive legislative history that the right to fairness affords crime victims specific rights to due process in the criminal justice system: "The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational." 150 CONG REC. S10910 (daily ed. Oct. 9, 2004). Accordingly, courts should "promote a liberal reading of the statute in favor of interpretations that promote victims' interest in fairness, respect, and dignity." *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D.N.Y. 2005). *See also United States v. BP Products North America Inc.*, H-07-434, 2008 Westlaw 501321 (S.D. Tex. Feb. 21, 2008) (stating the import of the CVRA is "to promote a liberal reading of the statute in favor of interpretations that promote victims' interest in fairness, respect, and dignity."). This duty requires courts to apply the CVRA "liberally to the extent consistent with other law." *Id.*; *see also United States v. Patkar*, CR. 06-00250 JMS, 2008 WL 233062, *5 (D. Haw. Jan. 28, 2008). Denial of "the right to be treated with fairness . . . works a clearly defined and serious injury." *Id.*

The victims seek to advance a proof of claim based upon crimes committed against them through conduct that may have served as the basis for the search warrant. It would be palpably unfair to deny them access to what may be crucial evidence, particularly after the investigation has concluded. The victims are also entitled to receive favorable evidence in the government's possession for the same reason that criminal defendants receive such information: fundamental considerations of fairness require that the government not deliberately withhold relevant information contrary to its position in court. For criminal defendants, this principle traces back to the landmark decision of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), in which the Supreme Court explained the production of exculpatory evidence is a principle designed for

> avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of

> justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." A prosecutor that withholds evidence on demand of an accused which, if made available would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice . . . .

Id. at 87-88.

Of course, precisely the same points can be made here about production of evidence to crime victims. The Justice Department will "win its point if justice is done" to crime victims in this case – but justice can be done only if these proceedings are fair, in the sense that all relevant information is provided to them. *See also In re Packaged Ice Antitrust Litig.*, 2011 WL 1790189, *8 (seriously questioning whether the justice will be done if the victims are deprived of relevant evidence). To have the victims' efforts to advance their proof of claim move forward while the government is withholding the information in the search warrant affidavit is to truly cast the government "in the role of an architect of a proceeding that does not comport with standards of justice."

To be sure, the victims in this case do not rely on a federal *constitutional* right to due process. But they have a parallel *statutory* right under the CVRA, which promises victims of crime that they will be "treated with fairness." 18 U.S.C. § 3771(a)(8). The clear intent of Congress in passing this provision was to provide a substantive "due process" right to crime victims. As one of the CVRA's co-sponsors (Senator Kyl) explained,

> The broad rights articulated in this section [§ 3771(a)(8)] are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of ***due process***. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct Government agencies and employees, whether they are in executive or judiciary branches, to treat victims of crime with the respect they deserve.

150 CONG. REC. S4269 (Apr. 22, 2004) (emphasis added).

The CVRA extends a "due process" right to crime victims like those who file this petition, seeking a right to fair access to evidence to prove their case. The very foundation of the *Brady* obligation is such a notion of due process: "[T]he suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). It would similarly violate due process – and thus not treat victims with "fairness" – to suppress evidence favorable to a crime victim where the evidence is material to the victims advancing their proof of claim in the Canadian Proceeding.

The law of this circuit clearly recognizes that the CVRA extends to applications to unseal judicial records. For example, in *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008), the Fifth Circuit held that the CVRA was violated because of *ex parte* discussions and a resulting order that were never revealed to the victim. The Fifth Circuit held strongly that "[t]he district court's reasons for its *ex parte* order do not pass muster." *Id.* at 394. Similarly, in *In re Simons*, 567 F.3d 800 (6th Cir. 2009), a crime victim brought a motion to unseal the record. After three months without any decision by the District Court, the victim sought a writ of mandamus. Although such a delay would ordinarily not justify mandamus, the Court held that the delay alone violated the victim's "right to be treated with fairness and with respect for the victim's dignity," and granted the writ. *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009) (quoting 18 U.S.C. § 3771(a)(8)). The dissent took the majority's opinion further stating that justice required unsealing the record and that "further delay in unsealing the file . . . is entirely inappropriate and contrary to the purposes of the Crime Victims' Rights Act . . ." *Id.* at 802.

For all the same reasons, "fairness" here requires the documents at issue to be unsealed. It would be contrary to the purposes of the CVRA to keep under seal information that could help the victims secure their CVRA right to "full and timely restitution" by advancing their proof of claim in the Claims Process. 18 U.S.C. § 3771(a)(6). This conclusion is particularly true where the government used the Civil Action as basis to justify its failure to seek restitution.

B. The Victims Here Have Protected CVRA Rights Even Though The Government Declined To Prosecute Reddy

The CVRA guarantees "crime victims" certain rights. Victims bringing this action are "crime victims" within the meaning of the CVRA because they have been "directly and proximately harmed as a result of the commission of a Federal offense." 18 U.S.C. § 3771(e). Specifically, the victims paid artificially inflated prices for packaged ice as a result of the antitrust conspiracy in which Reddy has been implicated. This injury has been sufficient to confer victim status on victims in connection with the Arctic and Home prosecutions for the purpose of challenging aspects of the sentencing of Arctic. *See, .g., In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010).

The government may attempt to argue the victims lack CVRA rights because there is not a pending indictment before this Court. Yet the Fifth Circuit has rejected the Government's position. It is clearly the law of this circuit that the CVRA applies "before any prosecution is underway." *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008). Venue for a motion to enforce the CVRA is proper "in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred." 18 U.S.C. § 3771(d)(3). It is of no import that the government has declined to prosecute Reddy. For example, in *Does v. United States*, 817 F. Supp.2d 1337, 1344 (S.D. Fla. 2011), the district court applied the CVRA **after** the government concluded its investigation with a non-prosecution

agreement.

Reddy has not been prosecuted. Without a prosecution "underway," venue is proper in the district where the crime was committed. *See, e.g., Does*, 817 F. Supp.2d at 1344 ("If . . . a prosecution is not underway, the victims may initiate a new action under the CVRA in the district court of the district where the crime occurred.") No doubt, Reddy committed its criminal antitrust violations in Dallas where it is headquartered and probable cause was found to authorize a search. The victims respectfully submit that the search warrant application itself will provide more than sufficient evidence that they are "victims" of a federal crime entitled to exercise CVRA rights.

CONCLUSION

For the reasons stated, the Court should unseal the declaration and any other material submitted in support of the above-captioned search warrant issued more than five years ago.

Dated:

Respectfully submitted,

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CERTIFICATE OF SERVICE

This confirms that the foregoing was served on the attached list via U.S. Mail on this 8th day of March, via this Court's CM/ECF system.

/s/ E. P. Keiffer
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