

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

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC., <i>et al.</i> , ¹	:	Case No. 12-10605 (KG)
	:	
Debtors in a Foreign Proceeding.	:	(Jointly Administered)
	:	
	:	Ref. Docket No. 453
	:	Obj. Deadline: September 30, 2019 at 4:00 p.m.

**NOTICE OF FILING OF FINAL REPORT OF ARCTIC GLACIER
INTERNATIONAL INC. PURSUANT TO BANKRUPTCY RULE 5009(c)**

PLEASE TAKE NOTICE that on August 28, 2019, 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 a proceeding under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Court of Queen’s Bench Winnipeg Centre, filed the *Motion for Entry of Order Closing Chapter 15 Cases and Relief from Certain Noticing Requirements* (the “Motion”).²

PLEASE TAKE FURTHER NOTICE that in connection with Motion and accordance with Local Rule 3022-1, the Monitor hereby files the *Final Report of Arctic Glacier International Inc. Pursuant to Bankruptcy Rule 5009(c)*, attached hereto as Exhibit A.

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

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

Dated: Wilmington, Delaware
August 28, 2019

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

MONITOR'S FINAL REPORT OF
ARCTIC GLACIER INTERNATIONAL INC.
PURSUANT TO BANKRUPTCY RULE 5009(c)

Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the “**Monitor**”) of Arctic Glacier Income Fund (“**AGIF**”), Arctic Glacier Inc., Arctic Glacier International Inc. and those other 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**”) respectfully submits this final report (this “**Report**”) pursuant to rule 5009(c) of the

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Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). The Monitor respectfully represents as follows:

BANKRUPTCY RULE 5009(c)

1. Bankruptcy Rule 5009(c) provides:

Cases Under Chapter 15. A foreign representative in a proceeding recognized under §1517 of the Code shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

Fed. R. Bankr. P. 5009(c). The Monitor files this Report in satisfaction of Bankruptcy Rule 5009(c).

REPORT ON THE STATUS OF THIS CHAPTER 15 CASES

2. 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, including, but not limited to, authorizing and directing the Debtors to commence, and the Monitor, the Financial Advisor (as defined in the Sale and Investor Solicitation Process (the “**SISP**”)) and the Chief Process Supervisor (as defined in the SISP) to perform their obligations under, a process offering potential investors an opportunity to purchase or invest in the Debtors’ business and operations in accordance with the SISP.

3. On February 22, 2012, the Monitor commenced the Chapter 15 Cases by filing verified petitions on behalf of the Debtors, pursuant to sections 1504 and 1515 of the Bankruptcy Code, seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

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

5. On March 16, 2012, this Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “**Recognition Order**”). Pursuant to the Recognition Order, this Court (a) granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, (b) authorized the Debtors to obtain postpetition secured financing, and (c) enforced the Initial Order on a permanent basis in the United States.

6. Included among the Debtors are 28 companies incorporated in the United States (“U.S.”), including one limited partnership located in the U.S. (collectively, the “**U.S. Debtors**”).

7. The U.S Debtors were borrowers and/or guarantors pursuant to the Debtors’ long-term financial obligations and had pledged their assets as collateral for such obligations, and the operations of the Debtors were centrally managed from their head office in Winnipeg, Manitoba, Canada, which was where senior management was based. In order to ensure a coordinated approach to the restructuring, all of the Debtors sought protection under the CCAA in Canada, with ancillary proceedings in the U.S. under chapter 15 of title 11 of the United States Code (the “**Chapter 15 Cases**”).

8. The Chapter 15 Cases were commenced as part of the coordinated restructuring of the business and operations of the Debtors and to effectuate a sale, restructuring or recapitalization of the business.

9. In the CCAA Proceeding and under the supervision of the Monitor and the Canadian Court, the Debtors sold substantially all of their business and assets. The proceeds were sufficient to pay secured creditors in full. The remaining proceeds were held by the Monitor pending determination of the amount of creditor claims and the filing of a Plan of Arrangement (the “**Plan**”) under the CCAA to govern the distribution of the remaining proceeds to unsecured creditors and, to the extent that all creditors could be paid in full, to make distributions to holders of outstanding trust units of AGIF, or of a beneficial interest in same (collectively, “**Unitholders**”).

10. Accordingly, the Monitor established a procedure for the identification and determination of all claims (other than certain excluded claims) (collectively, the “**Claims**”) and Director, Officer or Trustee Claims (“**DO&T Claims**”) (the “**Claims Process**”).

11. After appropriate notice, the Debtors held a meeting of unitholders to consider and vote on the CCAA Plan. The CCAA Plan was approved by 99.81% of all unitholders who voted, and over 65% of unitholders voted. The Canadian Court approved and sanctioned the CCAA Plan on September 5, 2014 (the “**Sanction Order**”).

12. On September 16, 2014, this Court recognized the Sanction Order and gave full effect to its provisions throughout the United States [Docket No. 354].

13. On January 22, 2015 (the “**Plan Implementation Date**”), the CCAA Plan was successfully implemented after the Monitor certified that the conditions precedent set out in the CCAA Plan had been satisfied or waived.

**REPORT ON THE NATURE AND RESULTS
OF THE MONITOR'S ACTIVITIES IN
THE CANADIAN PROCEEDING AND THE CHAPTER 15 CASES ON AND AFTER
THE PLAN IMPLEMENTATION DATE**

14. On the Plan Implementation Date, and pursuant to the Plan, the Monitor, on behalf of the Arctic Glacier Parties, among other things: (i) established the reserves and distribution cash pools required to be established pursuant to the Plan; (ii) made distributions to holders of settled or accepted Claims (“**Proven Claims**”) to satisfy such Proven Claims in full; and (iii) transferred \$54,498,863.58 (the “**Initial Distribution**”) to the transfer agent under the Plan for distribution to registered Unitholders as of December 18, 2014 (the “**Initial Unitholder Distribution Record Date**”).

15. On January 26, 2015, the Monitor filed a certificate with the Canadian Court confirming that the conditions precedent to the Plan had been satisfied or waived in accordance with the Plan and that the Plan Implementation Date had occurred.

16. Following the Initial Distribution, certain persons contacted AGIF and/or the Monitor asserting that they did not receive a portion of the Initial Distribution despite being entitled to it. One Unitholder in particular, asserted that he (and corporations controlled by him and certain family members) was entitled to, but did not receive, approximately \$2 million of the Initial Distribution (the “**Brodski Parties**”). AGIF, in consultation with the Monitor, considered these assertions (collectively, the “**Unitholder Assertions**”), reviewed the steps that were taken to effect the Initial Distribution, and took the position that it was not responsible for errors, if any, in the delivery of the Initial Distribution after the transfer of the Initial Distribution to the Transfer Agent on the Plan Implementation Date.

17. As a result of the Unitholder Assertions and to allow for an orderly, comprehensive and timely resolution of potential issues arising from the Unitholder Assertions,

the Monitor recommended establishing a procedure for the identification and determination of certain potential claims relating to the Initial Distribution (the “**Unitholder Claims Process**”).

18. On June 2, 2015, the Canadian Court issued an order approving the Unitholder Claims Process (the “**Unitholder Claims Procedure Order**”).

19. The Unitholder Claims Procedure Order contemplated claims against AGIF arising from any action or omission on or after the setting of the Initial Unitholder Distribution Record Date in connection with the Initial Distribution, claims against AGIF’s Officers or Trustees in connection with an action or omission occurring on or after the setting of the Initial Distribution Record Date in connection with or related to the Initial Distribution, and claims based on rights of any Officer or Trustee against AGIF which arose as a result of any Person filing an O&T Proof of Claim in respect of such Officer or Trustee for which such Officer or Trustee was entitled to be indemnified by AGIF (collectively, the “**Unitholder Claims**”) and established a bar date for Unitholder Claims of July 28, 2015.

20. The Unitholder Claims Procedure Order contemplated the appointment of a Unitholder Claims Officer to adjudicate any Unitholder Claims that could not otherwise be resolved prior to September 8, 2015.

21. On July 8, 2015, the Court issued an order (the “**U.S. Unitholders Claims Procedure Recognition Order**”) recognizing the Unitholder Claims Procedure Order on certain terms including that: the Monitor ask the Unitholder Claims Officer to mediate any disputes in respect of any claims brought by the Brodski Parties with the mediation logistics to be agreed between the Monitor, AGIF and the Brodski Parties, each acting reasonably and the Unitholder Claims Officer, and that the entry of the U.S. Unitholder Claims Procedure Recognition Order and the Unitholder Claims Procedure Order be issued without prejudice to the Brodski Parties’ ability

to commence an adversary proceeding in the Court as long as such proceeding was commenced on or before October 30, 2015.

22. The Brodski Parties were the only parties that advanced Unitholder Claims that were not otherwise resolved.

23. On October 15, 2015 AGIF, the Monitor, Mr. Brodski and their respective legal counsel participated in an unsuccessful mediation and on October 30, 2015, the Brodski Parties commenced an adversary proceeding by filing a complaint with the Court (the “**Brodski Complaint**”) which named AGIF and the individual Trustees as defendants, asserted damages of approximately \$2 million, plus reasonable attorney’s fees and costs, pre-judgement interest, punitive damages, treble damages and allowance of the Brodski Parties’ claims and a distribution pursuant to the Plan.

24. On January 21, 2016, the defendants in the Brodski Complaint filed a motion to dismiss the Brodski Complaint (the “**Motion to Dismiss**”). The parties fully briefed the Motion to Dismiss and on April 19, 2016, the Court heard oral arguments.

25. On July 13, 2016, the Court issued a Memorandum Opinion addressing the Motion to Dismiss and an order granting the Motion to Dismiss in its entirety (the “**Dismissal Order**”).

26. On July 19, 2016, the Brodski Parties filed a Notice of Appeal to appeal the Dismissal Order (the “**Brodski Appeal**”).

27. On July 21, 2016, the Court issued an oral order (the “**Brodski Appeal Oral Order**”) pursuant to the Court’s standing order dated September 11, 2012 regarding procedures to govern mediation of all appeals from the Court which places such appeals in mandatory mediation. The Brodski Appeal Oral Order required that, should the parties jointly request the matter be

removed from the mandatory mediation requirement, they were to provide a briefing schedule and/or advise whether they believe a teleconference with a Magistrate Judge would be of assistance.

28. On August 4, 2016 the parties filed their joint written submission with the Court indicating that they do not believe a mediation would be successful given the previous unsuccessful mediation.

29. On August 18, 2016, the Court issued an order approving a briefing schedule that provided for: (i) Appellants' opening brief due September 23, 2016; (ii) Appellees' answering brief due October 21, 2016; and (iii) Appellant's reply brief due November 11, 2016.

30. The parties fully briefed the Brodski Appeal and on June 14, 2017, the District Court for the District of Delaware released its Memorandum Opinion in the matter which affirmed the Court's Dismissal Order.

31. On July 12, 2017 the Brodski Parties filed a Notice of Appeal (the "**Brodski Third Circuit Appeal**") with the United States Court of Appeals for the Third Circuit (the "**Third Circuit Court**").

32. The Brodski Third Circuit Appeal was fully briefed, and the Third Circuit Court required the parties to attend an oral argument on March 22, 2018.

33. On August 20, 2018, the Third Circuit Court released its unanimous decision in which it affirmed the decision of the District Court and following which, the Brodski Parties had 14 days in which to file a petition for a rehearing on the matter. No such petition was filed. Further, the Brodski Parties did not petition to the United States Supreme Court for a writ of certiorari to review the decision of the Third Circuit Court prior to the deadline of November 19, 2018.

34. On January 24, 2017, the Debtors announced the settlement of the final Claim filed in the Claims Process to be resolved thereby completing the Claims Process which resulted in 83 proofs of claim having been filed in the total amount of approximately \$548 million (combined currency) and 4 DO&T proofs of claim having been filed, with 25 Proven Claims totaling approximately \$34 million.

35. Pursuant to the Plan, each of the Arctic Glacier Parties, or the Monitor on their behalf, as the case may be, were to take certain steps after the Plan Implementation Date (the “**Post-Plan Implementation Date Transactions**”), including a series of steps, assumptions, distributions, transfers, payments, contributions, reductions of capital, settlements and releases of various of the Arctic Glacier Parties. Included among the Post-Plan Implementation Date Transactions was the winding up of the various Arctic Glacier Parties.

36. As at June 3, 2019, the last of the 28 U.S. Debtors was dissolved. Accordingly, the Arctic Glacier Parties no longer have any presence, business or assets in the U.S.

CONCURRENT REQUEST TO CLOSE THE CHAPTER 15 CASES

37. The Monitor submits that, currently, there is no further restructuring activity for this Court to conduct in the context of the Chapter 15 Cases. Indeed, the primary purposes of the Chapter 15 Case, being recognition of the Canadian Proceeding and recognition and enforcement of the Plan and Sanction Order, have been achieved. Any additional matters to be resolved are entirely within the context of the Canadian Proceeding and the contours of the Plan and Sanction Order. The Monitor therefore believes that they no longer need to make further appearances before this Court in the Chapter 15 Cases.

38. Concurrently herewith the Monitor is filing the Monitor’s Motion for Entry of Order Closing Chapter 15 Cases and Relief From Certain Noticing Requirements (the “**Case**

Closing Motion”), pursuant to which the Monitor seeks entry of a final decree closing the Chapter 15 Cases. Pursuant to Bankruptcy Rule 5009(c), parties-in-interest have thirty (30) days from the date hereof to object to closure of the Chapter 15 Cases. In the event that no such objections are filed, or such objections have been consensually resolved, the Monitor will file a certification seeking entry of the proposed order attached to the Case Closing Motion, thereby closing the Chapter 15 Cases.

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Respectfully Submitted on August 27, 2019 by:



Alan J. Hutchens, Senior Vice-President,
Alvarez & Marsal Canada, Inc., in its
capacity as Monitor of Arctic Glacier Income Fund,
Arctic Glacier Inc., Arctic Glacier International Inc.
and the other chapter 15 debtors