

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

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC., et al.	:	Case No. 12-10605 (KG) (Jointly Administered)
	:	
Debtors in a Foreign Proceeding.	:	<b>Objection Deadline: April 13, 2012 at 4:00 p.m.</b>
	:	<b>Hearing Date: April 20, 2012 at 2:00 p.m.</b>

**MOTION OF NESTOR H. IRIZARRY AND PATRICIA IRIZARRY  
FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED  
WITH AND CONSUMMATE SETTLEMENT OF STATE COURT  
PERSONAL INJURY ACTION**

Nestor H. Irizarry and Patricia Irizarry (together, the “Movants”), by their undersigned attorneys, submit this motion (the “Motion”) for an order, substantially in the form submitted herewith, granting relief from the automatic stay pursuant to sections 362 and 1522 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure, and Rule 4001-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to permit the Movants to proceed with and consummate the settlement of a state court personal injury action brought against the above-captioned debtors (collectively, the “Debtors”) to the extent of available insurance proceeds. In further support of this Motion, the Movants respectfully represent as follows:

**BACKGROUND**

1. These chapter 15 cases were commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code on February 22, 2012.
2. On February 23, 2012, the Court entered an order [D.I. 27] directing the joint administration of the Debtors’ chapter 15 cases.



3. Debtors Arctic Glacier, Inc. and Arctic Glacier Rochester, Inc. are defendants in a personal injury action commenced by the Movants in 2009 and currently pending in the Supreme Court of the State of New York, in and for the County of Monroe, Index No.: 09/2860 (the “State Court Liability Action”).

4. On February 3, 2012, prior to the filing of the Debtors’ chapter 15 cases, the parties, including Debtors Arctic Glacier, Inc. and Arctic Glacier Rochester, Inc., settled the State Court Liability Action for the sum of \$2,250,000 (the “Settlement”). Pursuant to the Settlement, Debtors Arctic Glacier, Inc. and Arctic Glacier Rochester, Inc. are to contribute \$2,150,000 and third-party defendant, The Elevator Guild, is to contribute the remaining \$100,000. The Settlement was read on the record during a hearing before the Supreme Court of the State of New York and is therefore binding on the parties pursuant to New York state law.

5. The Debtors have available liability insurance coverage to pay the full amount of the Settlement, through Federal Insurance Company providing general aggregate limits of \$2,000,000 per occurrence and Chubb Insurance Co. of Canada providing additional excess coverage limits of up to \$5,000,000. Thus, the full amount of the Debtors’ share of the Settlement is covered by and will be paid from the available liability insurance policies.<sup>1</sup> Since the filing of the Debtors’ cases, however, the insurance providers have refused to release the proceeds or agree to dismissal of the State Court Liability Action absent stay relief from this Court.

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<sup>1</sup> Copies of the pertinent declaration pages of the applicable insurance policies are attached hereto as Exhibit A. Upon information and belief, both policy issuers are licensed by one or more states within the United States and said policy proceeds constitute property within the territorial jurisdiction of the United States.

6. On March 16, 2012 this Court entered an order [D.I. 70] granting recognition of the foreign main proceeding and granting certain related relief. Among other things, the order directed that section 362 of the Bankruptcy Code shall apply with respect to the Debtors and their property that is within the territorial jurisdiction of the United States.

### **JURISDICTION**

7. This Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code. This is a core proceeding under sections 157(b)(2)(B), (G), and (P). Venue is proper in this District pursuant to section 1410 of title 28 of the United States Code.

### **RELIEF REQUESTED**

8. By this Motion, the Movants request relief from the automatic stay imposed by section 362(a) of the Bankruptcy Code to allow them to proceed with the State Court Liability Action and consummate the Settlement thereof to the extent of available insurance proceeds.

### **BASIS FOR RELIEF REQUESTED**

9. The Movants request that the Court lift the automatic stay, pursuant to 11 U.S.C. § 362(d), to permit the State Court Liability Action to proceed and allow consummation of the Settlement. Section 362(d)(1) of the Bankruptcy Code provides that, upon request of a party in interest and after notice and hearing, the court shall grant relief from the automatic stay “for cause.” 11 U.S.C. § 362(d)(1). “Cause” is not defined in the Bankruptcy Code and must be determined on a case-by-case basis. Soliman v. Spencer (In re Spencer), 115 B.R. 471 (D. Del. 1990); see also Izzarelli v. Rexene Prods.

Co. (In re Rexene Prods. Co.), 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citing Int'l Bus. Machines v. Fernstrom Storage and Van Co. (Matter of Fernstrom Storage and Van Co.), 938 F.2d 731, 735 (7<sup>th</sup> Cir. 1991)). “Cause” for relief from the automatic stay under Section 362(d) is not limited to situations where a creditor is inadequately protected, but encompasses many different scenarios. Id.

10. A rigid test is not to be applied in determining whether there is sufficient “cause.” Am. Airlines, Inc. v. Cont'l Airlines, Inc. (In re Cont'l Airlines, Inc.), 152 B.R. 420, 424 (D. Del. 1993). The legislative history to section 362(d)(1) indicates that cause may be established by a single factor such as “a desire to permit an action to proceed . . . in another tribunal,” or “lack of any connection with or interference with the pending bankruptcy case.” In re Rexene Prods. Co., 141 at 574 (citing H.R.Rep. No. 95-595, 95th Cong., 1st Sess., 343-344 (1977) U.S. Code Cong. & Admin. News pp. 5787, 6300).

11. This Court has previously applied an equitable balancing test to determine, if “cause” exists to lift the automatic stay to allow litigation to go forward in a non-bankruptcy forum. In re Rexene Prods. Co., 141 B.R. at 576. Under the equitable balancing test, the Court reviews three factors:

- (1) whether prejudice will be caused to either the bankrupt estate or the debtor as a result of the suit;
- (2) whether the hardship to the movant by maintenance of the automatic stay outweighs the hardship caused to the debtor; and
- (3) whether the movant has a reasonable probability of prevailing on the merits of the suit.

Id.

12. Application of the equitable balancing test in the present case clearly demonstrates that relief from the automatic stay is warranted. First, the Debtors will not suffer any prejudice if the stay is modified because the Settlement has already been reached in the State Court Liability Action and is binding on all parties. Consummation of the Settlement and contribution by the Debtors' insurance providers and co-defendants of the amounts owed will have no material effect on the property of the Debtors' estates and will not in any way impair reorganization efforts. Moreover, the Debtors will not incur significant costs, if any, if the relief requested herein is granted as the insurance providers are defending the Debtors in the State Court Liability Action.

13. Second, the Movants will suffer a substantial financial burden if relief from the automatic stay is not granted, as the Settlement represents the Movants' primary source of recovery for injuries suffered. The Settlement is finalized and binding on all parties under New York state law. Relief from the automatic stay should therefore be granted to permit the parties to consummate the Settlement and to make the Movants whole for injuries previously suffered.

14. Finally, the Movants contend that the third factor is irrelevant at this juncture, as the Settlement alleviates the need to prosecute the merits of the Movants' claims. Nonetheless, the Movants submit that their claims are meritorious. If trial on the merits became necessary, the Movants believe they would possess a strong likelihood of succeeding. In re Cont'l Airlines, Inc., 152 B.R. at 426 ("Even a slight probability of success on the merits may be sufficient to support lifting an automatic stay in an appropriate case.").

**NOTICE**

15. Pursuant to Local Rule 4001-1(a), notice of this Motion was served on counsel for the Debtors, counsel for the Debtors' postpetition lenders, counsel for the Debtors' insurance providers, and the Office of the United States Trustee. The Movants respectfully submit that no other or further notice is warranted.

**CONCLUSION**

WHEREFORE, the Movants respectfully request that this Court enter an order, substantially in the form submitted herewith, granting relief from the automatic stay to permit the State Court Liability Action to proceed and allow consummation of the Settlement reached therein to the extent of the available insurance proceeds.

Dated: April 2, 2012  
Wilmington, Delaware

BAYARD, P.A.

/s/ Justin R. Alberto  
Ashley B. Stitzer (No. 3891)  
Justin R. Alberto (No. 5126)  
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-and-

WOODS OVIATT GILMAN, LLP  
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Rochester, New York 14614  
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Email: wrosenbaum@woodsoviatt.com

*Counsel for Nestor H. Irizarry and  
Patricia Irizarry*

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

---

In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL	:	Case No. 12-10605 (KG)
INC., et al.	:	(Jointly Administered)
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Debtors in a Foreign Proceeding.	:	<b>Objection Deadline: April 13, 2012 at 4:00 p.m.</b>
	:	<b>Hearing Date: April 20, 2012 at 2:00 p.m.</b>

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**NOTICE OF MOTION OF NESTOR H. IRIZARRY AND PATRICIA  
IRIZARRY FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED  
WITH AND CONSUMMATE SETTLEMENT OF STATE COURT  
PERSONAL INJURY ACTION**

**To: Counsel for the Debtors, counsel for the Debtors’ postpetition lenders,  
counsel for the Debtors’ insurance providers, and the Office of the United  
States Trustee.**

PLEASE TAKE NOTICE that on April 2, 2012, Nestor H. Irizarry and Patricia Irizarry filed the attached **Motion of Nestor H. Irizarry and Patricia Irizarry for Relief From the Automatic Stay to Proceed With and Consummate Settlement of State Court Personal Injury Action** (the “Motion”),<sup>1</sup> with the United States Bankruptcy Court for the District of Delaware (the “Court”). By the Motion, the Movants seek relief from the automatic stay to proceed with and consummate the Settlement of the State Court Liability Action.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Court on **April 20, 2012 at 2:00 p.m. (eastern)**.

PLEASE TAKE FURTHER NOTICE that you are required to file a response (and the supporting documentation required by Local Rule 4001-1(d)) to the attached Motion by **April 13, 2012 at 4:00 p.m. (eastern)**.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to the in the Motion.

PLEASE TAKE FURTHER NOTICE that, at the same time, you must also serve a copy of the response upon the Movants' attorneys:

BAYARD, P.A. Ashley B. Stitzer, Esquire Justin R. Alberto, Esquire 222 Delaware Avenue, Suite 900 Wilmington, Delaware 19801 Telephone: (302) 655-5000 Facsimile: (302) 658-6395 Email: <a href="mailto:astitzer@bayardlaw.com">astitzer@bayardlaw.com</a> <a href="mailto:jalberto@bayardlaw.com">jalberto@bayardlaw.com</a>	WOODS OVIATT GILMAN, LLP Warren B. Rosenbaum, Esquire 700 Crossroads Building Rochester, New York 14614 Telephone: (585) 987-2813 Facsimile: (585) 987-2913 Email: <a href="mailto:wrosenbaum@woodsoviatt.com">wrosenbaum@woodsoviatt.com</a>
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PLEASE TAKE FURTHER NOTICE that the hearing date specified above may be a preliminary hearing or may be consolidated with the final hearing, as determined by the Court.

PLEASE TAKE FURTHER NOTICE that the attorneys for the parties shall confer with respect to the issues raised by the Motion in advance for the purpose of determining whether a consent judgment may be entered and/or for the purpose of stipulating to relevant facts such as value of the property, and the extent and validity of any security instrument.

Dated: April 2, 2012  
Wilmington, Delaware

BAYARD, P.A.

/s/ Justin R. Alberto  
Ashley B. Stitzer (No. 3891)  
Justin R. Alberto (No. 5126)  
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-and-



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*Counsel for Nestor H. Irizarry and  
Patricia Irizarry*

# **EXHIBIT A**

# Chubb Commercial Excess And Umbrella Insurance

## Declarations

**Chubb Insurance Co. of Canada**  
2100, 333 - 7 Avenue S.W.  
Calgary, Alberta  
T2P 2Z1

**Policy Number** (07)79701595

**Named Insured and Mailing Address**

Arctic Glacier Income Fund  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

**Producer Name and Mailing Address**

Marsh Canada Limited  
1420 One Lombard Place  
Winnipeg, Manitoba  
R3B0X3

**Producer No.** 04850-000

**Policy Period**

(Item 2)

From: October 1, 2007

To: October 1, 2008

12:01 a.m. standard time at the address of the insured as stated.

**Premium**

240,900 USD

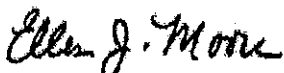
**Limits Of Insurance**

Excess Coverage Other Aggregate Limit (as applicable)	5,000,000 USD
Umbrella Coverages Aggregate Limit	5,000,000 USD
Products Completed Operations Aggregate Limit	5,000,000 USD
Advertising Injury and Personal Injury Aggregate Limit	5,000,000 USD
Each Occurrence Limit	5,000,000 USD

**Authorization**

In Witness Whereof, the company issuing this policy has caused this policy to be signed by its authorized officer:

**Chubb Insurance Company of Canada**



President

***Liability Insurance Section***

***Declarations***

**Reference Copy**

## Liability Insurance

### Schedule of Forms

*Policy Period*            OCTOBER 1, 2007 TO OCTOBER 1, 2008  
*Effective Date*            OCTOBER 1, 2007  
*Policy Number*            3527-37-69 GAB  
*Insured*                    ARCTIC GLACIER INC  
  
*Name of Company*        FEDERAL INSURANCE COMPANY  
*Date Issued*                OCTOBER 29, 2007

The following is a schedule of forms issued as of the date shown above:

<i>Form Number</i>	<i>Edition Date</i>	<i>Form Name</i>	<i>Effective Date</i>	<i>Date Issued</i>
80-02-2367	8-04	ADDL INS - SCHEDULED PERSON OR ORGANIZATION	10/01/07	10/29/07
80-02-0010	4-94	LIABILITY DECLARATIONS	10/01/07	10/29/07
80-02-2000	4-01	GENERAL LIABILITY	10/01/07	10/29/07
80-02-2012	6-98	EMPLOYEE BENEFITS ERRORS OR OMISSIONS	10/01/07	10/29/07
80-02-2132	4-01	DEDUCTIBLE-PER CLAIM INCL SUPPLEMENTARY PYMTS	10/01/07	10/29/07
80-02-2324	4-01	NON ACCUMULATION OF LIMITS OF INSURANCE	10/01/07	10/29/07
80-02-2668	8-01	EXCL. BIOLOGICAL AGENTS, TOTAL	10/01/07	10/29/07
80-02-6403	1-03	CAP ON CERTIFIED TERRORISM LOSSES	10/01/07	10/29/07
80-02-6528	4-05	EXCLUSION - INFORMATION DISTRIBUTION LAWS	10/01/07	10/29/07
80-02-6541	3-05	CONDITION - PREMIUM AUDIT	10/01/07	10/29/07

Reference Copy

last page

# Liability Insurance

## Declarations

**Chubb Group of Insurance Companies**  
15 Mountain View Road  
Warren, NJ 07059

### Named Insured and Mailing Address

ARCTIC GLACIER INC  
1654 MARTHALER LANE  
WEST ST. PAUL, MN 55118

Policy Number 3527-37-69 GAB

Effective Date OCTOBER 1, 2007

Issued by the stock insurance company  
indicated below, herein called the company.

**FEDERAL INSURANCE  
COMPANY**

Producer No. 0018979

Incorporated under the laws of  
INDIANA

Producer CHUBB DIRECT/MARSH CANADA LIMITED, MB/GAB  
1420, ONE LOMBARD PLACE  
WINNIPEG, MB R3B0X3

### Policy Period

From: OCTOBER 1, 2007 To: OCTOBER 1, 2008  
12:01 A.M. standard time at the Named Insured's mailing address shown above.

### Liability Coverage

### Limit Of Insurance

#### GENERAL LIABILITY

GENERAL AGGREGATE LIMIT	\$ 2,000,000	
EACH OCCURRENCE LIMIT	\$ 2,000,000	
ADVERTISING INJURY AND PERSONAL INJURY AGGREGATE LIMIT	\$ 2,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$ 2,000,000	
MEDICAL EXPENSES LIMIT	\$ 10,000	
BODILY INJURY AND PROPERTY DAMAGE DEDUCTIBLE PER CLAIM		\$ 25,000

Reference Copy

**Liability Coverage**  
(continued)

**Limit Of Insurance**

**EMPLOYEE BENEFITS ERRORS OR OMISSIONS**

AGGREGATE LIMIT	\$ 1,000,000	
EACH CLAIM LIMIT	\$ 1,000,000	
DEDUCTIBLE - EACH CLAIM		\$ 1,000
RETROACTIVE DATE		JUNE 30, 2000

**RATING INFORMATION**

**STATE: MINNESOTA**

COVERAGE NAME:

PREM/OPS

CLASSIFICATION CODE NUMBER:

14405

CLASSIFICATION DESCRIPTION:

ICE DEALERS & DISTRIBUTORS

(THIS CLASSIFICATION INCLUDES PRODUCTS/COMPLETED OPERATIONS)

PREMIUM BASIS:

GROSS SALES:

\$178,027,101

RATE:

1.616

**STATE: MINNESOTA**

**EMPLOYEE BENEFITS**

CLASSIFICATION CODE NUMBER:

00176

CLASSIFICATION DESCRIPTION:

EMPLOYEE BENEFITS E&O

PREMIUM BASIS:

NUMBER OF EMPLOYEES:

302

RATE:

0.993

**Reference Copy**

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

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

**ORDER GRANTING MOTION OF NESTOR H. IRIZARRY AND PATRICIA  
IRIZARRY FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED  
WITH AND CONSUMMATE SETTLEMENT OF STATE COURT  
PERSONAL INJURY ACTION**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of Nestor H. Irizarry and Patricia Irizarry (together, the “Movants”) for the entry of an order granting relief from the automatic stay to proceed with and consummate the Settlement of the State Court Liability Action; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and adequate notice of the Motion having been given; and that no other or further notice need be provided; and it further appearing that cause exists to grant the relief requested in the Motion; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore; it is hereby

ORDERED that the Motion is granted in its entirety; and it is further

ORDERED that the Movants are granted relief from the automatic stay to proceed with and consummate the Settlement of the State Court Liability Action; and it is further

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or in relation to the implementation of this Order.

Dated: April \_\_\_\_, 2012  
Wilmington, Delaware

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The Honorable Kevin Gross  
Chief United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I, Justin R. Alberto, hereby certify that on this 2nd day of April, 2012, I caused a copy of the foregoing **Motion of Nestor H. Irizarry and Patricia Irizarry for Relief From the Automatic Stay to Proceed With and Consummate Settlement of State Court Personal Injury Action** on the following parties via First Class United States Mail and Electronic Mail:

Robert J. Brady, Esquire Matthew B. Lunn, Esquire <i>Young Conaway Stargatt &amp; Taylor, LLP</i> 1000 North King Street Wilmington, Delaware 19801 Email: rbrady@ycst.com mlunn@ycst.com	Marc Abrams, Esquire Mary K. Warren, Esquire Alex W. Cannon, Esquire <i>Willkie Farr &amp; Gallagher LLP</i> 787 Seventh Avenue New York, New York 10019-6099 Email: mabrams@willkie.com mwarren@willkie.com acannon@willkie.com
Howard A. Cohen, Esquire Robert K. Malone, Esquire <i>Drinker Biddle &amp; Reath LLP</i> 1100 North Market Street, Suite 1000 Wilmington, Delaware 19801 Email: howard.cohen@dbr.com robert.malone@dbr.com	Abhilash M. Raval, Esquire David S. Cohen, Esquire Cindy Chen Delano, Esquire <i>Milbank, Tweed, Hadley &amp; McCloy LLP</i> 1 Chase Manhattan Plaza New York, New York 10005 Email: araval@milbank.com dcohen2@milbank.com cdelano@milbank.com
Thomas B. Cronmiller, Esquire <i>Hiscock &amp; Barclay, LLP</i> 100 Chestnut Street Rochester, New York 14604 Email: tcronmiller@hblaw.com	David Klauder, Esquire 844 King Street, Room 2207 Lockbox #35 Wilmington, Delaware 19899-0035 Email: david.klauder@usdoj.gov

/s/ Justin R. Alberto  
Justin R. Alberto (No. 5126)