

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

In re:)
Arctic Glacier International Inc.,) 12-10605-KG
Chapter 15 Debtor.)

**MOTION OF LARRY HARDISTY & SCOTT DENHE FOR RELEASE OF THE
AUTOMATIC STAY PURSUANT TO 11 USC § 362(D)(1)**

Larry Hardisty and Scott Denhe (collectively, the “Movants”) by and through their undersigned counsel, file this Motion for Relief from the Automatic Stay pursuant to 11 U.S.c. § 362(d)(1) (“Motion”), and in support thereof, respectfully represent as follows:

I. JURISDICTION AND VENUE

- 1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
- 2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
- 3. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (G) and (0).

II. FACTS

- 4. On February 22, 2012 (“Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 15 of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*
- 5. Prior to the Petition Date, the Movants were seriously injured in a vehicle accident on November 1, 2010 “at or near” Portland, Oregon. See **Ex. A.**
- 6. This accident occurred November 1, 2010, and was the fault of the driver of a vehicle owned by the Debtor.
- 7. This accident required the Movants to spend nearly a year engaged in ongoing medical treatment. Subsequent to the Movants becoming medically stationary, their Oregon



counsel engaged in settlement negotiations with the Debtor's motor vehicle insurance carrier, Chartis Insurance (the "Insurer").

8. In July of 2012, the Movants reached an agreement with Chartis Insurance; each signed releases agreeing to settle their respective claims for amounts set forth in these documents, which are attached hereto as **Exhibit A**. Thereafter, Chartis Insurance wrote to indicate that the settlement could not proceed because of the pending bankruptcy proceeding. *See **Exhibit B***.

III. RELIEF REQUESTED

9. The Movants seek relief from the automatic stay imposed in this case to liquidate their claims against the Debtor through the enforcement of the settlement, to the extent that the funds can be recovered from the Insurer. The Movants will file a proof of claim against the Debtor for the amount of the Debtor's liability from any resulting judgment or settlement that is not covered by the relevant insurance.

IV. ARGUMENT

10. "Cause" exists to grant the movants relief from the automatic stay. Section 362(d)(1) of the Bankruptcy Code provides: "On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay (1) for cause, including the lack of adequate protection of an interest in property of such party in interest." Cause is not defined by the Code, and Courts determine whether it exists on a case-by-case basis after considering the totality of the circumstances. *Baldino v. Wilson*, 116 F.3d 87, 90 (3d Cir. 1997).

11. Upon information and belief, the Insurer will be providing all funds called for by the attached settlement agreements. The Debtor's estate, therefore, will not be depleted in any way if this Court grants the relief sought in this Motion. By granting the relief sought in the Motion, this Court would simply be permitting the final liquidation of a claim for which the Debtor has insurance through the Insurer.

WHEREFORE, the Movants respectfully request that this Court enter an Order: (i) modifying the automatic stay to permit the Movants to liquidate their claim against the Debtor by declaring that the stay does not apply to these claims and directing the Debtor to permit their insurer to fund the settlement set forth in these agreements; and (ii) granting such other relief as is equitable.

December 11, 2012

BILLION LAW



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For the Debtor

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

In re:)
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Chapter 15 Debtor.)

**NOTICE: MOTION OF LARRY HARDISTY & SCOTT DENHE FOR RELEASE OF
THE AUTOMATIC STAY PURSUANT TO 11 USC § 362(D)(1)**

PLEASE TAKE NOTICE THAT a hearing on the captioned motion will be held on **a date and time to be determined**. The hearing shall be held at 824 North Market Street; Courtroom #3, 6th Floor; Wilmington, DE 19801. Objections, if any, must be served on the undersigned no later than January 10, 2012 at 4.00 p.m. EST.

THE CAPTIONED MOTION MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING IF UNLESS A TIMELY OBJECTION IS FILED.

December 11, 2012

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For the Debtor

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

In re:)
Arctic Glacier International Inc.,) 12-10605-KG
Chapter 15 Debtor.)

**ORDER: MOTION OF LARRY HARDISTY & SCOTT DENHE FOR RELEASE OF
THE AUTOMATIC STAY PURSUANT TO 11 USC § 362(D)(1)**

IT IS HEREBY ORDERED:

1. The automatic stay is hereby modified to permit the Movants to liquidate their claim against the Debtor;
2. The Debtor shall pay these claims **only to the extent** that the proceeds are provided by the Debtor's insurer;
3. The Debtor shall permit their insurer to fund the settlement set forth in these agreements.

DATED: _____, 201__

J.

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

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Chapter 15 Debtor.)

**COS: MOTION OF LARRY HARDISTY & SCOTT DENHE FOR RELEASE OF THE
AUTOMATIC STAY PURSUANT TO 11 USC § 362(D)(1)**

A copy of this motion has been served via CM/ECF and via U.S. Post, First Class on:

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December 11, 2012

BILLION LAW

A handwritten signature in black ink, appearing to read "Mark M. Billion", is enclosed in a thin black rectangular border.

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