

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	
	:	<b>Ref. Docket No. 4</b>

**ORDER GRANTING PROVISIONAL RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative for the above captioned debtors (collectively, the "Debtors") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Court of Queen's Bench of Winnipeg Centre, for entry of a provisional order, pursuant to sections 105(a), 362, 364, 365, 1519 and 1521 of the Bankruptcy Code: (i) recognizing and enforcing the initial order (the "Initial Order") of the Canadian Court on an interim basis in the United States, including the Canadian Court's decision (a) to authorize the Debtors to enter into and perform

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

under that certain DIP Facility,<sup>3</sup> and (b) to grant the DIP Charge to the DIP Lenders under the DIP Facility, and; (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders, certain protections afforded by the Bankruptcy Code, including those protections provided by section 364(e) of the Bankruptcy Code; (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases (the "Chapter 15 Cases") on an interim basis, pursuant to sections 105(a), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code; (iv) applying, on an interim basis, section 108 of the Bankruptcy Code; and (v) extending, on an interim basis, pursuant to sections 1519(a)(3), 1521(a)(7) and 105(a) of the Bankruptcy Code, the application of sections 362 and 365(e) to and for the benefit of Glacier Valley Ice Company, L.P. ("Glacier L.P."), one of the Debtors' non-debtor affiliates; and the Court having reviewed the Motion, the Petition for Recognition, and the Reynolds Declaration, and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; and no other or further notice being necessary or required; and the Court having determined that the legal and factual bases set forth in the Motion, the Petition for Recognition and the Reynolds Declaration, and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact

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All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Initial Order.

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Monitor has demonstrated a substantial likelihood of success on the merits that (i) the Debtors are subject to a pending “foreign main proceeding” as that term is defined in section 1502(4) of the Bankruptcy Code, (ii) the Monitor is a “foreign representative” as that term is defined in section 101(24) of the Bankruptcy Code, and (iii) all statutory elements for recognition of the Canadian Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The Monitor has demonstrated that (i) the commencement of any proceeding or action against the Debtors and Glacier L.P. and their respective businesses and all of their assets, should be enjoined pursuant to sections 105(a), 1519 and 1521 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code to permit the fair and efficient administration of the Canadian Proceeding and to allow the Monitor to supervise an orderly marketing and sale process for the assets of the Debtors, pursuant to the sale and investment solicitation procedures approved in the Initial Order, for the benefit of all stakeholders; and (ii) the relief requested will not cause either an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

E. The Monitor has demonstrated that unless this Order is issued, there is a material risk that one or more parties in interest will take action against the Debtors, Glacier L.P.

or their assets, thereby interfering with the jurisdictional mandate of this court under chapter 15 of the Bankruptcy Code, interfering with and causing harm to the Monitor's effort to supervise a sale and maximize the value of the Debtors' assets pursuant to the terms of the SISP. As a result, the Debtors will suffer immediate and irreparable harm for which they will have no adequate remedy at law and therefore it is necessary that the Court grant the relief requested without prior notice to parties in interest or their counsel.

F. The Monitor has demonstrated that the incurrence of indebtedness authorized by the Initial Order is necessary to prevent irreparable harm to the Debtors because without such financing, the Debtors will be unable to continue operations, which will significantly impair the value of their assets.

G. The Monitor has demonstrated that the terms of the financing are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lenders, as defined in the Initial Order, and the DIP Lenders would not have extended financing without conditions precedent requiring a final recognition order by this Court and the Debtors' best efforts to obtain interim protection under section 364(e) of the Bankruptcy Code, as made applicable by sections 105(a), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, while consideration of final recognition was pending.

H. Absent the relief granted herein, the Debtors may suffer immediate and irreparable injury, loss or damage for which there is no adequate remedy at law. Further, unless this Order issues, the assets of the Debtors and Glacier L.P. located in the United States could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in the Debtors suffering immediate and irreparable injury, loss, or damage by, among other things, (i) interfering with the jurisdictional mandate of this Court under chapter 15 of the

Bankruptcy Code, and (ii) interfering with or undermining the success of the Canadian Proceeding and the Debtors' efforts to pursue a going-concern sale or refinancing of their business for the benefit of all their stakeholders.

I. The Monitor has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of the Debtors' contracts may take the position that the commencement of the Canadian Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration, if permitted and valid, could severely disrupt the Debtors' operations and marketing efforts, result in irreparable damage to the value of the Debtors' business, and cause substantial harm to the Debtors' creditors and other parties in interest.

J. The Monitor has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief.

K. The interests of the public will be served by entry of this Order.

L. The Monitor and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

**NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

1. The Motion is granted.
2. The Initial Order is hereby enforced on an interim basis, including, without limitation, (a) authorizing the Debtors to obtain credit under the DIP Facility and grant the Lenders the DIP Charge, and (b) staying the commencement or continuation of any actions

against Glacier L.P. or its assets, and shall be given full force and effect in the United States until otherwise ordered by this Court.

3. While this Order is in effect, the Monitor and the Debtors shall be entitled to the full protections and rights under section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States. Specifically, all persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action involving the Debtors, their assets or the proceeds thereof, or their former, current or future directors and officers, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors or their assets, (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or any of their property, or (d) managing or exercising control over the Debtors' assets located within the territorial jurisdiction of the United States except as expressly authorized by the Debtors in writing.

4. Pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, (a) section 108 is hereby made applicable to the Debtors in these Chapter 15 Cases, (b) section 362 of the Bankruptcy Code is hereby made applicable in the Chapter 15 Cases to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States, and (c) section 365(e) of the Bankruptcy Code is hereby made applicable to the Debtors and to Glacier L.P. in these Chapter 15 Cases.

5. While this Order is in effect, Glacier L.P. shall be entitled to protections and rights coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Glacier L.P.'s assets within the territorial

jurisdiction of the United States. Specifically, all persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action involving Glacier L.P., its assets or the proceeds thereof, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against Glacier L.P. or its assets, (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against Glacier L.P. or any of its property, or (d) managing or exercising control over Glacier L.P.'s assets located within the territorial jurisdiction of the United States except as expressly authorized by Glacier L.P. in writing.

6. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

7. Pending disposition of the Chapter 15 Petitions, pursuant to section 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 is applicable to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States in the Chapter 15 Cases; provided, however, that nothing in this paragraph 7 shall limit, abridge, or otherwise effect: (i) the rights afforded the Agent and the DIP Lenders under the DIP Facility, Commitment Letter or the Initial Order.

8. The Debtors are authorized, on a provisional basis, to incur up to US\$10 million and CAD\$15 million under and in accordance with the terms of the DIP Facility and Commitment Letter, as defined in the Initial Order. In addition, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges,

security documents, guarantees and other documents (collectively, the “DIP Documents”) as are contemplated by the Commitment Letter or as may be reasonably requested by the DIP Lenders, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Commitment Letter and the DIP Facility without any need for further approval from this Court.

9. To the extent authorized under the Initial Order, the DIP Lenders are hereby granted, on a provisional basis, the DIP Lenders’ Charge, as defined in the Initial Order, on all of the Credit Parties’ United States assets in the amount of US \$10 million and CAD \$15 million minus the amount outstanding from time to time under the DIP Facility, subject to the priorities, terms and conditions of the Initial Order, to secure current and future amounts outstanding under the Commitment Letter and the DIP Facility. The obligations under the DIP Facility shall be on a joint and several basis for all Credit Parties (as defined in the Commitment Letter). As set forth in the Initial Order, all Arctic Glacier U.S. Group entities shall provide AGIF and Arctic Glacier Canada a lien that is a super-priority, first-ranking charge, on account of any funds extended by AGIF and Arctic Glacier Canada to any Arctic Glacier U.S. Group entity after the commencement of the Canadian Proceeding (the “Intercompany Liens”). The obligations arising under the DIP Facility shall be further secured by the Intercompany Liens. The Debtors’ Prepetition Secured Lenders have agreed to subordinate their prepetition liens to the Intercompany Liens.

10. To the extent provided in the Initial Order, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents as are contemplated in the Commitment Letter or by the DIP Facility or as may be reasonably required



by the DIP Lenders pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lenders under and pursuant to the Commitment Letter and the DIP Facility including, but not limited to, the fees and expenses of the DIP Lenders' Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court.

11. The DIP Documents and the Commitment Letter have been negotiated in good faith and at arms' length between the Debtors and the DIP Lenders. Any financial accommodations made to the Debtors by the DIP Lender pursuant to the Initial Order and the DIP Documents shall be deemed to have been made by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 105(a), 364(e), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lenders, and the validity of the indebtedness, and the priority of the liens authorized by the Initial Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

12. No action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Lenders including funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders or the Prepetition Secured Lenders to a charge against the collateral pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. The DIP Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.

Upon entry of a final order, recognizing these proceedings as foreign main proceedings, the Prepetition Secured Lenders shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the collateral.

13. Effective on a provisional basis upon entry of this Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 105, 506(c) or 552(b) of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of collateral or property after an Event of Default under the Commitment Letter, the First Lien Credit Agreement or the Second Lien Credit Agreement, or termination or breach under the Commitment Letter, the First Lien Credit Agreement, the Second Lien Credit Agreement, the Initial Order or this Order.

14. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding not stayed by section 362, or (b) staying the exercise of any rights that are not subject to stay arising under section 362(o).

15. Any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion on not less than seven (7) business days’ written notice to Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York, 10019, Attn: Mary K. Warren and Alex W. Cannon, and the Court will hear such motion on a date to be scheduled by the Court.

16. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the Monitor shall not be subject to any stay in the implementation, enforcement or realization of the relief granted in

this Order; and (c) the Monitor is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

17. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule 65(c) are hereby waived, to the extent applicable.

18. This Court shall retain jurisdiction with respect to any and all matters relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware  
February 23, 2012

  
KEVIN GROSS  
CHIEF UNITED STATES BANKRUPTCY JUDGE