

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**MOTION FOR AN ORDER AUTHORIZING THE
MONITOR TO FILE A CONSOLIDATED LIST OF FOREIGN
PROCEEDING ADMINISTRATORS, LITIGATION PARTIES AND
ENTITIES AGAINST WHOM PROVISIONAL RELIEF IS SOUGHT**

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 (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 of Winnipeg Centre (the “Canadian Court”), files this motion (the “Motion”) for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Monitor to file a consolidated

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.



list of foreign proceeding administrators, parties to litigation pending in the United States involving any of the Debtors, and all persons and entities against whom the Debtors seek provisional relief under section 1519 of the Bankruptcy Code. In support of the Motion, the Monitor refers the Court to the statements contained in the *Declaration of Philip J. Reynolds in Support of the Verified Petition of Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of Its Affiliates, for (I) Recognition of Foreign Main Proceeding and (II) Certain Related Relief* (the “Reynolds Declaration”), which was filed concurrently herewith and is incorporated by reference. In further support of the relief requested herein, the Monitor respectfully represents as follows:

JURISDICTION AND VENUE

This Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a petition for recognition of the Canadian Proceeding under section 1515 of the Bankruptcy Code. This is a core proceeding under section 157(b)(2)(P) of title 28 of the United States Code. Venue is proper in this District pursuant to section 1410 of title 28 of the United States Code. The statutory predicate for the relief requested herein is section 105(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 1007(a)(4).

BACKGROUND

1. The Debtors are engaged in the manufacture and distribution of premium-quality, packaged ice products to more than 75,000 retail locations in Canada and the United States. The Debtors are the largest producers of packaged ice in Canada and the second largest producer in the United States, with combined production capacity in both countries of 11,266 tons of ice per day and refrigerated storage capacity of 65,467 pallets of finished product, with

each pallet holding approximately one ton of packaged product. The Debtors operate thirty-nine production plants and forty-seven distribution facilities across six provinces in Canada and within twenty-three states in the United States.

2. The Debtors' financial performance has been suffering since mid-2008 due to a variety of factors, including (a) substantial extraordinary costs and the negative effects associated with certain antitrust investigations and litigation, (b) increased financing costs, and (c) unusually cool and wet spring weather in 2011 in most of the Debtor's markets in Canada and the United States that reduced demand for Arctic Glacier's products. The combination of those factors caused the Debtors, in June of 2011, to breach certain covenants under both the first lien credit agreement and their second lien credit agreement.

3. The Debtors have concluded, after consultation with their professional advisors, to pursue a going-concern sale of their business under the supervision of the Canadian Court and with the benefit of monitoring in accordance with the CCAA. Accordingly, the Debtors, with the support of its principal secured lenders, filed an Application under the CCAA before the Canadian Court, on February 22, 2012, seeking, among other things, the Canadian Court's approval and supervision of a marketing and sale process. The Canadian Court entered the Initial Order commencing the Canadian Proceeding and granting certain initial relief on February 22, 2012.

4. The Initial Order, among other things, authorizes the Debtors to enter into a debtor in possession credit facility with its prepetition lenders, grants stay protection to the Debtors and Glacier Valley Ice Company, L.P., a non-debtor affiliate, and approves a marketing process for the going concern sale or refinancing of the Debtors' business.

5. The Initial Order also authorized the Debtors to enter into the DIP Facility pursuant to the terms of a Commitment Letter dated February 21, 2012 (the “Commitment Letter”) between Arctic Glacier Inc. and Arctic Glacier International Inc. as Borrowers, and Arctic Glacier Income Fund (“AGIF”) and any existing or subsequently organized or acquired subsidiary of AGIF as Guarantors and the Debtors’ prepetition lenders (the “DIP Lenders”). A copy of the Commitment Letter is attached as Exhibit Q to the McMahon Affidavit, which is annexed to the Reynolds Declaration as Exhibit B. As set forth in the DIP Facility approved by the Initial Order, the Debtors are authorized to incur a portion, US \$10 million and CAD \$15 million, of the DIP Facility following, among other things, the grant of the provisional relief sought herein. The Debtors will be authorized to incur the remainder, US \$14 million and CAD \$11 million, of the DIP Facility following, among other things, recognition of these cases as a foreign main proceeding. The Initial Order grants the DIP Lenders a charge on all property of the Debtors, which has priority as set forth in the Initial Order.

6. The Initial Order also stayed the continuation or commencement of actions and proceedings against Arctic L.P. and its assets. Arctic L.P. is a California limited partnership and is wholly owned by its general partner, Mountain Water Ice Company, and its limited partner, Arctic Glacier California Inc, each of which are applicants in the Canadian Proceeding and Debtors in these chapter 15 cases (the “Chapter 15 Cases”). As a partnership, Arctic L.P. is ineligible to be an applicant under the CCAA. Arctic L.P., however, is an operating company that is integral to the Debtors’ California operations. Accordingly, Arctic Glacier requested, and the Canadian Court granted, stay protection for Arctic L.P. in the Initial Order.

7. On the date hereof (the “Petition Date”), the Monitor commenced these Chapter 15 Cases by filing, among other things, chapter 15 petitions and the *Verified Petition of*

Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of Its Affiliates, for (I) Recognition of Foreign Main Proceeding and (II) Certain Related Relief seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

8. Additional information about the Debtors' business and operations, the events leading up to the Petition Date, and the facts and circumstances surrounding the Canadian Proceeding and the Chapter 15 Cases is set forth in the Reynolds Declaration.

RELIEF REQUESTED

9. By the Motion, the Monitor respectfully requests the entry of an order authorizing the Monitor to file a consolidated list of foreign proceeding administrators, parties to litigation pending in the United States involving any of the Debtors, and all persons and entities against whom the Debtors seek provisional relief under section 1519 of the Bankruptcy Code.

BASIS FOR RELIEF

10. In pertinent part, Bankruptcy Rule 1007(a)(4) provides that "a foreign representative filing a petition for recognition under chapter 15 shall file with the petition . . . (B) unless the court orders otherwise, a list containing the names and addresses of 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 is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the [Bankruptcy] Code."

11. The Debtors presently maintain various computerized lists that contain the data required to comply with the requirements of Bankruptcy Rule 1007(a)(4). The Monitor believes that the information, as maintained in the Debtors' computer files (or those of their agents), may be consolidated and utilized efficiently to provide interested parties with the information required by Bankruptcy Rule 1007(a)(4). Accordingly, by the Motion, the Monitor

seeks authority to file a consolidated list identifying the names and addresses of authorized foreign administrators of the Debtors, parties to litigation pending in the United States involving any of the Debtors, and all entities against whom the Debtors seek section 1519 provisional relief.

12. The Monitor submits that the filing of a consolidated Bankruptcy Rule 1007(a)(4) list will be more efficient and will conserve the resources of all parties in interest, including the Court.

13. Bankruptcy courts in this district have granted relief similar to the relief requested in the Motion. See, e.g., In re Angiotech Pharm., Inc., No. 11-10269 (KG) (Bankr. D. Del. Jan. 31, 2011); In re Grant Forest Products Inc., Case No. 10-11132 (PJW) (Bankr. D. Del. Apr. 6, 2010); In re Fraser Paper Inc., Case No. 09-12123 (KJC) (Bankr. D. Del June 19, 2009).

NOTICE

14. Notice of the Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Debtors; and (c) counsel to the Debtors' prepetition secured lenders. In light of the nature of the relief requested, the Monitor submits that no further notice is required.

NO PRIOR REQUEST

15. No prior request for the relief sought in the Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Monitor respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, approving and authorizing the Monitor to file a consolidated list of foreign proceeding administrators, parties to litigation pending in the

United States involving any of the Debtors, and all entities against whom the Debtors seek provisional relief under section 1519 of the Bankruptcy Code.

Dated: Wilmington, Delaware
February 22, 2012

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EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
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. | : | |
| | : | Ref. Docket No. ____ |

**ORDER AUTHORIZING THE MONITOR TO FILE A CONSOLIDATED
LIST OF FOREIGN PROCEEDING ADMINISTRATORS, LITIGATION
PARTIES AND ENTITIES AGAINST WHOM PROVISIONAL RELIEF IS SOUGHT**

Upon the motion (the "Motion")² of 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 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 an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4), authorizing the Monitor to file a consolidated list of foreign proceeding administrators, parties to litigation

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

pending in the United States involving any of the Debtors, and all persons and entities against whom the Debtors seek provisional relief under section 1519 of the Bankruptcy Code; and upon the Reynolds Declaration; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record herein; and it appearing that the relief requested by the Motion is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted.
2. The Monitor is authorized to file a consolidated list of the information required by Bankruptcy Rule 1007(a)(4) in the Debtors' main case before this Court.
3. The Monitor is authorized to take all actions necessary to implement this Order.
4. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
_____, 2012

UNITED STATES BANKRUPTCY JUDGE