UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC., *et al.*,[1]	:	Case No. 12-10605 (KG)
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	**Hearing Date: February 27, 2014 at 10:00 a.m.** **Obj. Deadline: February 20, 2014 at 4:00 p.m.**

NOTICE OF FINAL APPROVAL MOTION

PLEASE TAKE NOTICE that 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, has filed the attached *Joint Motion, Pursuant to Sections 105(a), 363, 1501, 1507, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 7023, and 9019, for Order Approving Agreement Settling Claims of Indirect Purchasers* (the "Final Approval Motion").

PLEASE TAKE FURTHER NOTICE that a hearing (the "Hearing") to consider the Final Approval Motion will be held on **February 27, 2014 at 10:00 a.m. (ET)** before the Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that any objections to the Final Approval Motion must be filed on or before **February 20, 2014 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy

[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); and (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

Filed: 2/6/14
Docket No. 281

of the objection so as to be actually received by the following parties on or before the Objection Deadline: (i) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Marc Abrams, Mary K. Warren, and Alex W. Cannon); (ii) Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6100, Toronto, Ontario, Canada M5X 1B8 (Attn: Marc Wasserman and Jeremy Dacks); (iii) Young Conway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady and Matthew P. Lunn); (iv) Jones Day, 2727 North Harwood Street, Chicago, Illinois 60601-1692 (Attn: Gregory M. Gordon and William A. Herzberger and Paul M. Green); (v) McCarthy Tétrault LLP, 66 Wellington Street West, Suite 5300, Toronto, Ontario, Canada M5K 1E6 (Attn: Kevin P. McElcheran); (vi) Wild Law Group PLLC, 121 Reynolda Village, Suite M, Winston-Salem, North Carolina 27106 (Attn: Matthew S. Wild); (vii) Wild Law Group PLLC, 98 Distillery Road, Warwick, New York 10990 (Attn: Max Wild); (viii) Wild Law Group PLLC, 27735 Jefferson Avenue, Saint Clair Shores, Michigan 48081 (Attn: John M. Perrin); and (ix) Cross & Simon, LLC, 913 North Market Street, 11th Floor, Wilmington, Delaware 19899-1380 (Attn: Christopher P. Simon).

PLEASE TAKE FURTHER NOTICE that, in accordance with the *Order Pursuant to sections 105(a), 363(b), 1501, 1507, 1520, and 1521 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 7023, 9014, and 9019 Recognizing and Enforcing the Canadian Approval Order and Granting Certain Preliminary Approvals in Connection with the Agreement Settling the Claims of Indirect Purchasers* [Docket No. 260], any member of the Settlement Class, as defined in the Final Approval Motion, who wishes to opt-out or exclude himself or herself from the Settlement Agreement must do so in writing (an "Opt-Out Letter"). Opt-Out Letters must be submitted to UpShot Services, LLC (the "Claims Administrator"), at Arctic Glacier Settlement Processing Center, c/o UpShot Services LLC, 7808 Cherry Creek South Drive, Suite 112, Denver, CO 80231 so as to be actually received by the Claims Administrator on or before the Objection Deadline. An Opt-Out Letter must provide the Settlement Class member's name, address, and email address.

PLEASE TAKE FURTHER NOTICE that you do not need to appear at the Hearing if you do not object to the relief request in the Final Approval Motion.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or by notice filed on the docket.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE FINAL APPROVAL MOTION WITHOUT FURTHER NOTICE OR A HEARING.

PLEASE TAKE FURTHER NOTICE that additional copies of the Final Approval Motion are available: (a) by accessing the Court's internet website at https://ecf.deb.uscourts.gov (a login and a password to the Court's Public Access to Court Electronic Records ("Pacer") are required to access this information and can be obtained through the PACER Service Center at http://www.pacer.psc.uscourts.gov); (b) from the Monitor's website at http://www.amcanadadocs.com/arcticglacier or http://www.kcclle.net/ArcticGlacier (without cost); or (c) upon written request to the Monitor's counsel (by email or facsimile) addressed to:

Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn.: Melissa Romano, e-mail, mromano@ycst.com or facsimile, 302-576-3450) (without cost).

Dated: February 6, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ian J. Bambrick

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Co-Counsel to the Monitor and Foreign Representative

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC., *et al.*,[1]	:	Case No. 12-10605 (KG)
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	**Hearing Date: February 27, 2014 at 10:00 a.m.** **Obj. Deadline: February 20, 2014 at 4:00 p.m.**

JOINT MOTION, PURSUANT TO SECTIONS 105(a), 363, 1501, 1507, 1520, AND 1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, 7023, AND 9019, FOR ORDER APPROVING AGREEMENT SETTLING CLAIMS OF INDIRECT PURCHASERS

Wild Law Group PLLC ("Class Counsel"), in its capacity as counsel to the class of indirect purchasers certified by this Court on a preliminary basis for settlement purposes, Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") of the 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"), and the Debtors jointly file this motion (the "Motion") for the entry of an order, substantially in the form

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attached as Exhibit B (the "U.S. Approval Order"), pursuant to sections 105(a), 363, 1501, 1507, 1520, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 7023, 9014, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (a) approving, on a final basis, that certain *Settlement Agreement*, entered into as of October 22, 2013, individually and on behalf of (i) the Settlement Class,[2] (ii) the Debtors, and (iii) the Monitor (the "Settlement Agreement"), a copy of which is annexed to the U.S. Approval Order as Exhibit A; (b) establishing the procedures by which Settlement Class Members must file Claim Forms; (c) approving the form and manner of notice thereof; (d) approving the audit and challenge procedures described in the Settlement Agreement; (e) authorizing the Monitor, subject to the occurrence of the Payment Trigger Date, to transfer the Net Settlement Amount to the Claims Administrator; (f) subject to the occurrence of the Payment Trigger Date, authorizing the Claims Administrator to distribute the Net Settlement Amount to the holders of Approved Claims in the manner provided in the Settlement Agreement; (g) approving the release and exculpation provisions contained in the Settlement Agreement; and (h) granting related relief. In support hereof, the Settlement Parties rely upon the *Thirteenth Report of the Monitor*, dated October 10, 2013 [Docket No. 246] (the "Thirteenth Report"), the *Fourteenth Report of the Monitor*, dated January 29, 2014 [Docket No. 279] (the "Fourteenth Report"), the *Declaration of Matthew S. Wild*, dated November 11, 2013 [Docket No. 255] (the "Preliminary Approval Declaration"), and the *Declaration of Matthew S. Wild*, executed on February 5, 2014 [Docket No. 280] (the "Final Approval Declaration"). In further support of the relief requested herein, the Settlement Parties respectfully represent as follows:

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[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to those terms in the Settlement Agreement.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court and this district pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 1501, 1507, 1520, and 1521(a)(7) of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, 7023, and 9019.

GENERAL BACKGROUND

2. On February 22, 2012, the Debtors[3] 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"))[4] and the Chief Process Supervisor (as defined in the SISP) to

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3 As described more fully in the *Declaration of Philip J. Reynolds in Support of 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* [Docket No. 2] (the "Reynolds Declaration"), Glacier Valley Ice Company, L.P ("Glacier L.P."), an affiliate of the Debtors, is not an applicant in the Canadian Proceeding because partnerships are ineligible to be applicants under the CCAA. However, pursuant to this Court's Provisional Relief Order and Recognition Order (as each term is defined below), the stay provided for in section 362 applies to Glacier L.P. Additionally the assets of Glacier L.P. were sold as provided in the CCAA Vesting Order and the U.S. Sale Order (both of which are defined herein). Moreover, Glacier L.P. is a party to the Settlement Agreement. For convenience sake, all references to "Debtors" herein and in the Proposed Order shall include Glacier L.P., even though such entity is not a Debtor in these Chapter 15 Cases (as defined below).

4 A copy of the SISP is annexed as Schedule C to the Initial Order, which is annexed as Exhibit A to the Reynolds Declaration.

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 "Petition Date"), the Monitor commenced these proceedings (these "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] (the "Provisional Relief Order"), 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. On June 21, 2012, the Canadian Court entered the *Sale Approval and Vesting Order* (as amended and restated, the "CCAA Vesting Order"), pursuant to which the Canadian Court authorized and approved the sale of the Debtors' right, title, and interest in and to the Purchased Assets (as defined in the CCAA Vesting Order) free and clear of all Interests (as defined in the CCAA Vesting Order), except as provided in the Purchase Agreement (the "Sale").

7. On July 17, 2012, this Court entered an order [Docket No. 126] (the "U.S. Sale Order"), which among other things: (a) recognized and enforced the CCAA Vesting Order; (b) authorized and approved the Sale pursuant to section 363(f) of the Bankruptcy Code; (c) authorized and approved, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the U.S. Sale Order); and (d) granted certain related relief.

8. As contemplated by the CCAA Vesting Order and described in the *Notice of Filing of Monitor's Certificate* [Docket No. 139] (the "Certificate Filing Notice"), on July 27, 2012, the Monitor delivered the *Monitor's Certificate*, which, among other things, notified the Canadian Court and other parties in interest that the Sale had closed. A copy of the *Monitor's Certificate* was filed with the Certificate Filing Notice on August 2, 2012.

9. On September 5, 2012, the Canadian Court entered the Claims Procedure Order (the "Claims Procedure Order") establishing procedures for the submission and determination of claims against the Debtors and their directors, officers, and trustees (the "Claims Process"). In anticipation of the filing of the Proof of Claim (as defined below), the Monitor, the Debtors, and Class Counsel agreed that the Monitor would seek a Claims Procedure Order that would provide that the Proof of Claim could be filed on behalf of the putative class and could be pursued under United States law before a United States lawyer who would adjudicate the claim under United States law. Paragraph 47 of the Claims Procedure Order provided that such a lawyer, experienced in United States antitrust and class-action law, would be appointed as Special Claims Officer (as such term is defined in the Claims Procedure Order) to adjudicate the Proof of Claim.

10. On September 14, 2012, this Court entered the *Order Recognizing and Enforcing Claims Procedure Order of the Canadian Court* [Docket No. 166] (the "Claims Procedure Recognition Order") recognizing and giving full force and effect in the United States to the Claims Procedure Order and the Claims Process contemplated thereby.

11. On March 7, 2013, the Canadian Court entered the *Order* (the "Claims Officer Order"), which, among other things, supplemented the Claims Procedure Order by empowering the Claims Officers (as defined in the Claims Officer Order and including the Special Claims Officer) with the authority to adjudicate and determine questions of fact and law concerning the validity and value of disputed claims that could not be resolved consensually.

12. On May 7, 2013, this Court entered an Order [Docket No. 227] recognizing and giving full force and effect in the United States to the Claims Officer Order.

13. On October 16, 2013, following mediation and extensive, arm's-length negotiations among the Settlement Parties concerning the issues raised by the Proof of Claim, the Canadian Court entered the Canadian Approval Order, which, among other things, (a) authorized the Chief Process Supervisor, on behalf of the Debtors, and the Monitor to execute the Settlement Agreement, (b) granted the Class Counsel Charge in the amount of $200,000,[5] and (c) authorized the Monitor to seek this Court's approval of the Settlement Agreement.

14. On November 18, 2013, this Court entered the *Order, Pursuant to Sections 105(a), 363(b), 1501, 1507, 1520, and 1521 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 7023, 9014, and 9019, Recognizing and Enforcing the Canadian Approval Order and Granting Certain Preliminary Approvals in Connection with the Agreement Settling the Claims of Indirect Purchasers* [Docket No. 260] (the "Preliminary Approval Order"), which,

[5] All monetary amounts described herein are denominated in United States dollars.

among other things, (a) recognized, enforced, and gave full force and effect to the Canadian Approval Order in the United States, (b) certified the Settlement Class as a conditional settlement class, (c) approved the Named Plaintiffs as class representatives, and (d) approved Class Counsel as counsel for the Settlement Class.

15. Additional information about the Debtors' former businesses and operations, the Canadian Proceeding, the Sale and these Chapter 15 Cases are set forth in (a) the Reynolds Declaration, (b) the *Pre-Filing Report of the Proposed Monitor*, filed on the Petition Date as Exhibit C to the Reynolds Declaration, and (c) the reports of the Monitor previously filed with the Canadian Court and this Court.

RELIEF REQUESTED

16. By this Motion, the Settlement Parties request entry of the U.S. Approval Order that grants the following relief:

- Approval of the Settlement Agreement on a final basis, including certification of the Settlement Class on a final basis for settlement purposes only;
- Establishment of the procedures by which Settlement Class Members must file Claim Forms and approval of the form and manner of notice thereof;
- Approval of the audit and challenge procedures described in the Settlement Agreement;
- Subject to the occurrence of the Payment Trigger Date, authorization for the Monitor and the Claims Administrator to distribute the Net Settlement Amount to the holders of Approved Claims in the manner provided in the Settlement Agreement;
- Approval of the release and exculpation provisions contained in the Settlement Agreement; and
- Certain related relief.

BASIS FOR RELIEF

I. APPROVAL OF SETTLEMENT AGREEMENT

17. As fully described in the joint motion seeking this Court's entry of the Preliminary Approval Order [Docket No. 251] (the "Preliminary Approval Motion") and the Thirteenth Report, each filed with this Court on October 28, 2013, the Settlement Agreement, if approved by this Court, would effect a full and final settlement of the proof of claim filed by Class Counsel in the amount of "at least" $463.58 million (the "Proof of Claim").[6] The Proof of Claim states that it was filed on behalf of a class of U.S. retail purchasers of packaged ice who are located in sixteen (16) different states. It is based on an alleged conspiracy between certain of the Debtors, Reddy Ice, and Home City (collectively, the "Defendants") with respect to market allocation. The Proof of Claim was by far the largest and most complicated proof of claim filed in the Claims Process. Due to its magnitude, the Monitor has been unable to recommend a distribution to the Debtors' stakeholders until the Proof of Claim is satisfactorily resolved. A complete history of the events leading to the Settlement Agreement is provided in the Preliminary Approval Motion and the Thirteenth Report.

A. Summary of the Settlement Agreement

18. The material terms of the Settlement Agreement are as follows:

(a) **Allowance of Proof of Claim.** The Settlement Agreement (a) allows the Proof of Claim as a Proven Claim (as defined in the Claims Procedure Order) in the Claims Process in an amount not to exceed the Maximum Settlement Amount of $3.95 million, and (b) provides, subject to certain conditions, including the Canadian Court's entry of an Order with respect to the distribution of funds currently being held by the Monitor, for the Monitor to make a single payment to the Claims Administrator in an amount not to exceed the Maximum Settlement Amount.

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[6] A copy of the Proof of Claim is attached to this Motion as Exhibit A.

(b) **Settlement Class.** Paragraph 4 of the Preliminary Approval Order defined the Settlement Class as "[a]ll purchasers of packaged ice (a) who purchased packaged ice in the Claims States indirectly from any of the defendants in the MDL, including the Debtors, or their subsidiaries or affiliates (including all predecessors thereof) at any time during the Settlement Class Period, and (b) whose claims are within the scope of the Proof of Claim or claims asserted against any of the Debtors or their former employees in the MDL. Excluded from the Settlement Class are any governmental entities and defendants in the MDL, including their parents, subsidiaries, predecessors, or successors, defendants' alleged co-conspirators, and the Released Parties."

(c) **Payments to Holders of Approved Claims.** Holders of Approved Claims pursuant to the Settlement Agreement will receive $6.00 for three (3) to ten (10) bags of packaged ice and $0.60 for each additional bag. Payment amounts to individual Settlement Class members may be reduced proportionally under certain circumstances detailed in Sections 2.45 and 5.1.1(iv) of the Settlement Agreement.

(d) **Incentive Awards.** Class Counsel intends to seek an Incentive Award of $1,000 for each of the twenty (20) Named Plaintiffs. The Monitor and the Debtors have agreed that they will not oppose such a request.

(e) **Releases and Exculpations.** In exchange for the satisfaction of the Proof of Claim in the manner provided for in the Settlement Agreement, the Settlement Agreement provides for a comprehensive release and an exculpation of the Monitor, the Debtors and their current or former directors, officers and employees, the Chief Process Supervisor, and certain other parties.

(f) **Attorneys' Fees and Attorneys' Costs.** In connection with the Settlement Agreement, Class Counsel intends to seek an award of "Attorneys' Fees" not to exceed 33 1/3% of the Maximum Settlement Amount, and reimbursement of their "Attorneys' Costs" in an amount not to exceed $350,000. The Monitor and the Debtors have agreed that they will not oppose such a request.

(g) **Retention.** To the extent that the aggregate value of claims submitted plus the Notice and Administration Costs, Incentive Awards, and Attorneys' Fees and Attorneys' Costs is less than the Maximum Settlement Amount, the Monitor will be entitled to retain the difference on behalf of the Debtors and distribute such amounts to the Debtors' stakeholders in accordance with a future distribution order of the Canadian Court.

(h) **Opt-Out Procedures.** As required by paragraph 10 of the Preliminary Approval Order, any Settlement Class Member has the right to opt out of the Settlement Class, provided that such Class Member submits a valid and timely Opt-Out Letter. Opt-Out Letters must be submitted so as to be actually received by the Claims Administrator on or before February 20, 2014 at 4:00 p.m. An Opt-Out Letter must include such person's name, address, and email address.

(i) **Claim Submission Procedures.** As described in more detail below, Section 7.1 of the Settlement Agreement details the deadline and procedures governing the submission of Claim Forms.

(j) **Submission Deadline.** Section 2.61 of the Settlement Agreement defines "Submission Deadline" as the date that is sixty (60) days from the date on which the Final Approval Notice is published or such other date as may be set by the Bankruptcy Court. By this Motion, the Settlement Parties request that this Court fix June 12, 2014 at 4:00 p.m. (prevailing Eastern Time) as the deadline by which Settlement Class Members must submit Claim Forms. The Claims Administrator shall only accept Claim Forms sent by mail, hand delivery, facsimile, telecopy, electronic mail transmission or other electronic means. The Claims Administrator shall not accept or honor any Claim Forms that are not postmarked or delivered (if by means other than mail) by a date that is on or before the Submission Deadline.

(k) **Failure to Submit Completed Claim Form.** Settlement Class Members that fail to submit a completed Claim Form on or before the Submission Deadline shall be forever barred, estopped, and enjoined from asserting any Claim against the Maximum Settlement Amount Reserve, and the Monitor, the Applicants, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

(l) **Audit and Challenge Procedures.** As described in more detail below, Section 7.2 of the Settlement Agreement provides each Settlement Party with the right, subject to certain limitations, to audit the information provided in the Claim Forms submitted by each Claimant who submits a Claim or Claims in excess of $50.00, and to challenge the Claims Administrator's determinations regarding, among other things, approval or denial of each such Claim Form and the amount the Claims Administrator proposes to pay to each such holder of an Approved Claim.

(m) **Payment Trigger Date.** As soon as reasonably practicable after the occurrence of the Payment Trigger Date, the Settlement Parties shall confer and select a business day (the "Payment Date") on which the Monitor shall (a) distribute the Net Settlement Amount to the Claims Administrator for ultimate distribution to the holders of Approved Claims in accordance with Section 5.1.1 of this Agreement, and (b) pay the amount secured by the Class Counsel Charge to Class Counsel. The conditions precedent to the occurrence of the Payment Trigger Date are set forth in Section 8.2 of the Settlement Agreement.

(n) **Notice Plan.** The Final Approval Notice will be provided to potential members of the Settlement Class (collectively, "Settlement Class Members") through publication, electronic means, and, in some instances, hard-copy service. The notice plan is described below.

B. The Settlement Agreement Should Be Approved Pursuant to Sections 1520 and 363(b) of the Bankruptcy Code

19. Section 1520 of the Bankruptcy Code provides, in pertinent part, that "[u]pon recognition of a foreign proceeding that is a foreign main proceeding, [section 363 of the Bankruptcy Code applies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(2). Pursuant to section 363(b)(1) of the Bankruptcy Code, a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To obtain court approval of the use of property under section 363(b), a trustee needs only to show a legitimate business justification for the proposed action. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under section 363(b) when there is a legitimate business justification) (internal citation omitted); Computer Sales Int'l, Inc. v. Fed. Mogul Global, Inc. (In re Fed. Mogul Global, Inc.), 293 B.R. 124, 126 (D. Del. 2003) ("As applied in the Third Circuit, a court should approve a debtor's use of assets outside the ordinary course of business if the debtor can demonstrate a sound business justification for the proposed transaction."); In re Delaware and Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (noting that the Third Circuit has adopted the "sound business judgment" test for use of property under section 363(b) of the Bankruptcy Code).

20. The Monitor's and the Debtors' agreement and consent to the terms of the Settlement Agreement is supported by sound business judgment. The Settlement Agreement, if approved by this Court and implemented as contemplated, will allow for the full and final resolution of the Proof of Claim for less than the amount that the Monitor and the Debtors likely would expend in litigating the Proof of Claim before the Special Claims Officer. As described in

the Thirteenth and Fourteenth Reports, the terms of the Settlement Agreement have been extensively negotiated by the Debtor, the Monitor, and Class Counsel, and certain of the terms of the Settlement Agreement have already been approved by this Court through entry of the Preliminary Approval Order.

21. Moreover, approval of the Settlement Agreement will help provide the Monitor with the certainty necessary to effectuate (subject to approval by the Canadian Court) an initial distribution to holders of Proven Claims of the funds currently being held by the Monitor. It is without question that absent this Court's approval of the Settlement Agreement, the Monitor and the Debtors would expend significant resources litigating the Proof of Claim and face the inherent risks of litigation. In addition, there would likely be a significant delay in the distribution of funds for the benefit of the Debtors' creditors holding Proven Claims. Accordingly, the Monitor's and the Debtors' agreement and consent to the terms of the Settlement Agreement represents an exercise of sound business judgment, is in the best interest of the Debtors and all of their stakeholders, and, therefore, should be approved.

C. *The Settlement Agreement Should Be Approved Pursuant to Section 1521 of the Bankruptcy Code and Bankruptcy Rule 9019*

22. Section 1521 of the Bankruptcy Code provides, in relevant part, that "[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of [chapter 15 of the Bankruptcy Code] and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including granting any . . . relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) [of the Bankruptcy Code]." Id. at § 1521(a)(7).

23. Bankruptcy Rule 9019 requires a hearing and court approval of a settlement between a debtor and an adverse party and establishes the procedure by which a debtor may secure such approval. See Myers v. Martin (In re Martin), 91 F.3d 389, 395, n.2 (3d Cir. 1996). Bankruptcy Rule 9019 provides, in relevant part:

> [o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

24. The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored in bankruptcy." In re World Health Alts., Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). In determining whether to approve a settlement pursuant to Bankruptcy Rule 9019, a bankruptcy court is required to "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Martin, 91 F.3d at 393.

25. The ultimate inquiry, however, is whether, in the court's discretion, the compromise embodied in the settlement "is fair, reasonable, and in the interest of the estate." In re Louise's, Inc., 211 B.R. 798, 801 (D. Del. 1997); see also World Health Alts., Inc., 344 B.R. at 296 (noting that the decision to approve a settlement "is within the discretion of the bankruptcy court.").

26. As described in the Thirteenth and Fourteenth Reports, as well as in the Preliminary Approval Declaration and the Final Approval Declaration, the Settlement Agreement is the result of several months of vigorous and protracted, good-faith, arm's-length negotiations between the Monitor, the Debtors, and Class Counsel. The Monitor has been in regular contact, through discussions and meetings, with the Debtors' U.S. antitrust counsel and is

of the view that the total consideration to be given in exchange for the full and final resolution of the Proof of Claim is less than the amount that the Monitor and the Debtors likely would expend in litigating the Proof of Claim before the Special Claims Officer. This view is shared by the Monitor's own independent U.S. antitrust counsel. Additionally, the Settlement Agreement provides a degree of certainty with respect to costs and timing that cannot be achieved through continuing litigation before the Special Claims Officer, which was estimated to last at least several more years without any certainty of outcome. Even though the Monitor and the Debtors are of the view that the Proof of Claim is without merit, after consideration of various factors, including, without limitation, the costs associated with litigating the Proof of Claim before the Special Claims Officer and the inherent risks of litigation, the Monitor and the Debtors believe that the Settlement Agreement represents a fair and reasonable resolution of the Proof of Claim. Therefore, the terms of the Settlement Agreement satisfy Bankruptcy Rule 9019 and should be approved by the Court.

D. Approval of the Settlement Agreement Is Consistent with and Authorized by Sections 105(a), 1501, and 1507 of the Bankruptcy Code

27. Section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code, as "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Id. at § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002).

28. In addition, section 1507 of the Bankruptcy Code provides that "the court, if recognition is granted, may provide additional assistance to a foreign representative under this

title," and, when granting assistance, "shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure . . . the just treatment of all holders of claims against or interests in the debtor's property [and] the protection of claim holders in the United States against prejudice and inconvenience." 11 U.S.C. § 1507.

29. Further, Section 1501 of the Bankruptcy Code provides, in pertinent part that:

> The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of -
> (1) cooperation between -
> * * *
> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
> * * *
> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; [and]
> (4) protection and maximization of the value of the debtor's assets.

11 U.S.C. § 1501.

30. Approval of the Settlement Agreement is consistent with sections 105(a), 1501, and 1507 of the Bankruptcy Code. Providing the Debtors and their creditors with the power to settle and resolve claims on a final basis clearly is contemplated by multiple provisions of the Bankruptcy Code and the Bankruptcy Rules. Moreover, at the beginning of the Debtors' CCAA Proceedings, the Canadian Court requested in the Initial Order that this Court assist the Monitor and the Debtors in carrying out their duties. The Settlement Parties submit that approval of the Settlement Agreement will help to assure the consistent and just treatment of all creditors of the Debtors, including members of the proposed Settlement Class, consistent with the principles of comity, as contemplated generally by chapter 15 of the Bankruptcy Code and

specifically enumerated in section 1501 of the Bankruptcy Code. As such, the Settlement Parties respectfully request that this Court approve the Settlement Agreement.

E. The Settlement Agreement Should Be Approved Pursuant to Bankruptcy Rule 7023

1. Certification of the Settlement Class on a Final Basis

31. As provided in paragraph 4 of the Preliminary Approval Order, this Court certified the following class for settlement purposes only pursuant to Bankruptcy Rule 7023(b)(3):

> All purchasers of packaged ice (a) who purchased packaged ice in the Claims States indirectly from any of the defendants in the MDL, including the Debtors, or their subsidiaries or affiliates (including all predecessors thereof) at any time during the Settlement Class Period, and (b) whose claims are within the scope of the Proof of Claim or claims asserted against any of the Debtors or their former employees in the MDL.
>
> Excluded from the Settlement Class are any governmental entities and defendants in the MDL, including their parents, subsidiaries, predecessors, or successors, defendants' alleged co-conspirators, and the Released Parties.

32. As set forth in more detail in the Preliminary Approval Motion, the Thirteenth Report, and the Preliminary Approval Declaration, certification of the Settlement Class pursuant to Bankruptcy Rule 7023(a) and (b)(3) is warranted.

33. Pursuant to Bankruptcy Rule 7023(a), the Court must be satisfied that the numerosity, commonality, typicality, and adequacy requirements are satisfied. See FED. R. BANK. P. 7023(A). As described in more detail in the Preliminary Approval Motion and the Preliminary Approval Declaration, these four requirements are readily satisfied.

34. Bankruptcy Rule 7023(b)(3) permits class certification where "the court finds that questions of law or fact common to class members predominate over any questions

affecting only individual members, and that a class action is superior to other available methods for fairly adjudicating the controversy." Fed. R. Bankr. P. 7023(b)(3). As described in more detail in the Preliminary Approval Motion and the Preliminary Approval Declaration, it is clear that rule 7023(b)(3) is satisfied in the current matter.

35. Moreover, as of the date hereof, the Settlement Parties are not aware of any person or entity choosing to opt-out of the Settlement Class or desiring to file an objection to this Court's approval of the Settlement Agreement. As such, and for the reasons described herein and in the Preliminary Approval Motion, the Preliminary Approval Declaration, and the Thirteenth Report, the Settlement Parties respectfully request that this Court certify the Settlement Class on a final basis pursuant to Bankruptcy Rule 7023(a) and (b)(3).

2. Standards for Approval of the Settlement Agreement

36. Because the Preliminary Approval Order incorporated Bankruptcy Rule 7023 into these Chapter 15 Cases, this Court must also consider whether the Settlement Agreement is "fair, adequate, and reasonable" to the Settlement Class. FED. R. BANKR. PRO. 7023(e)(2).

37. The Third Circuit in the class action context has "articulated nine factors when determining the fairness of a proposed settlement: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." In re

Pet Food Prods. Liab. Litig., 629 F.3d 333, 350 (3d Cir. 2010) (citation omitted). These factors are referred to as the Girsh factors, named after Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir.1975) — the case in which they were first established. As noted by the United States District Court for the Eastern District of Pennsylvania, "[n]ot every factor need weigh in favor of settlement in order for the settlement to be approved by the Court." In re Processed Egg Products Antitrust Litig., 284 F.R.D. 278, 305 (E.D. Pa. 2012).

38. The Third Circuit also has set forth the following additional factors for consideration, but only where relevant: "[t]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved — or likely to be achieved — for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable." In re Pet Food Prods. Liab. Litig., 629 F.3d at 350 (citation omitted). These factors are referred to as the Prudential factors, named after In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283 (3d Cir. 1998) — the case in which they were first established.

39. The Third Circuit has instructed that "the district court must make findings as to each of the nine Girsh factors in order to approve a settlement as fair, reasonable, and adequate, as required by [Bankruptcy Rule] [70]23(e). The factors we identified in Prudential

are illustrative of additional inquiries that in many instances will be useful for a thoroughgoing analysis of a settlement's terms." In re Pet Food Prods. Liab. Litig., 629 F.3d at 350.

3. Analysis of the Girsh Factors Favors Approval of the Settlement Agreement

a. Complexity, Expense, and Duration of Litigation

40. The expected complexity and duration of this complex indirect purchaser antitrust class action strongly favors approval. "The first . . . factor — the complexity, expense and likely duration of the litigation — is intended to capture the probable costs, in both time and money, of continued litigation." In re Linerboard Antitrust Litig., 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004) (citations omitted); see also Nichols v. SmithKline Beecham Corp., CIV.A.00-6222, 2005 WL 950616 at *12 (E.D. Pa. Apr. 22, 2005) (same).

41. In considering the probable costs of continuing this particular litigation, it should be noted that "[f]ederal antitrust cases are complicated, lengthy, and bitterly fought." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 118 (2d Cir. 2005); see also In re Linerboard Antitrust Litig., 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004) ("[A]n antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.") (citations omitted). This is particularly true in this case because an indirect purchaser action brought under the laws of sixteen (16) states is considerably more complicated than the typical direct purchaser action. See In re Graphics Processing Units Antitrust Litig., 253 F.R.D. 478, 499 (N.D. Cal. 2008) ("[T]he problem of proof in an indirect purchaser case is intrinsically more complex, because the damage model must account for the actions of innocent intermediaries who allegedly passed on the overcharge."). Indeed, while considering Class Counsel's application for appointment as interim lead counsel before the MDL Court, Judge Borman noted as much. In re Packaged Ice Antitrust

Litig., MDL No. 1952, Dkt. No. 173 at 100-01 ("You've got more to do. . . . [M]ost of the people want to do the room service [the direct purchaser case]").

42. In finding the complexity and duration of an antitrust class action favored approval because the settlement occurred before formal discovery, one court in the Third Circuit stated:

> At the outset, the Court appreciates that antitrust suits . . . are often complex actions to prosecute. Furthermore, given that the settlement agreement occurred at an early stage of this litigation, prior to the active commencement of discovery, Plaintiffs have avoided such expense and delay as may have attached to these settling Defendants. Discovery in this case . . . would entail . . . considerable expenditures of financial resources and hours of attorney time relating to discovery for liability and damages, including extensive electronic discovery and scores of witness depositions, experts, class certification, further pre-trial motions, and potentially a trial on the merits. . . . [S]uch an undertaking would not only further prolong the litigation but also reduce the value of any recovery to the class. Accordingly, this factor weighs in favor of the . . . Settlement.

In re Processed Egg Prods. Antitrust Litig., 284 F.R.D. at 268-69.

43. Moreover, this case is significantly more complex than even the typical indirect purchaser case because of the layering of U.S. and Canadian bankruptcy regimes atop the U.S. federal antitrust laws governing the present dispute. As described above, pursuant to a stipulation embodied in the Claims Procedure Order, Class Counsel was permitted to file a class proof of claim to be heard by a special claims officer experienced in antitrust law and class actions. This procedure was untested, and there remained procedural questions. These considerations generally enhanced the complexity of this case and weigh in favor of an early settlement.

b. Reaction of the Class

44. It is premature to consider the reaction of the Settlement Class because the objection deadline and the deadline to submit Opt-Out Letters have not passed. However, as of the date of this Motion, the Settlement Parties are not aware of any party who intends to file an objection to this Court's approval of the Settlement Agreement and is not aware of any person having submitted an Opt-Out Letter. Objections, if any, will be handled by the Settlement Parties at the appropriate time. Additionally, as soon as practicable after the expiration of the objection deadline, the Claims Administrator shall file an affidavit with this Court indicating the number of Opt-Out Letters received.

c. Stage of Proceedings and Amount of Discovery

45. The absence of formal discovery in this case does not weigh against approval. The purpose of this factor is to "capture the degree of case development that class counsel [had] accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 537 (3d Cir. 2004) (citations omitted). Formal discovery is not required, where, as here, counsel conducted an independent investigation. See, e.g., In re Processed Egg Prods. Antitrust Litig., 284 F.R.D. at 270 (approving antitrust settlement before discovery took place and noting that "[t]he Third Circuit Court of Appeals has recognized that, even if a settlement occurs in an early stage of litigation, there are means for class counsel to apprise themselves of the merits of the litigation, such as 'conduct[ing] significant independent discovery or investigations to develop the merits of their case (as opposed to supporting the value of the settlement)' or retaining their own experts or interviewing

witnesses"); Newby v. Enron Corp., 394 F.3d 296, 306 (5th Cir. 2004) ("[F]ormal discovery [is not] a necessary ticket to the bargaining table.").

46. Although no formal discovery has taken place in this matter, the Monitor and the Debtors have been actively working to resolve the issues raised by the MDL since the commencement of the Canadian Proceeding and the Chapter 15 Cases. In an effort to reach an early resolution of the issues presented by the Proof of Claim filed in the Claims Process, the Monitor, the Debtors, and Class Counsel agreed to participate in a mediation presided over by the Honorable former Justice George Adams, which took place in Toronto, Ontario over a two-day period (January 31 and February 1, 2013). The mediation involved a comprehensive, without-prejudice analysis of the issues presented by the Proof of Claim. Despite the assistance of the Honorable Mr. Adams, the parties were unable to reach a resolution at the mediation.

47. Additionally, Class Counsel has made a thorough investigation into the facts that might support or defeat the case. Class Counsel's extensive investigation included, *inter alia*, interviewing one of the whistleblowers and meeting with the lawyer for the other whistleblower, interviewing executives from a national supermarket chain to understand how antitrust overcharges could be passed on and how consumers who purchased packaged ice can be identified and tracked, interviewing an executive from an ice company and the owner of a defunct ice company to understand the economics of, and competition in, the ice industry, analyzing the transcript of and exhibits to the deposition of Keith Corbin (a former Arctic Glacier executive who pleaded guilty), working with an economics consulting firm, analyzing tape recordings (and transcripts) of numerous conversations between Home City executives and executives of Arctic Glacier and Reddy Ice, and intervening in a lawsuit involving Home City

and obtaining the unsealing of the record and analyzing certain discovery in that action to learn the economics of, and competition in, the ice industry.

48. Class Counsel believes that it had more information about the case than the direct purchasers' class counsel had when they settled with Home City. Significantly, the MDL Court approved the direct purchaser class' settlement with Home City, holding that:

> [T]he contours of this litigation are not a mystery and are informed by government investigations, internal corporate investigations that have been made public, state attorney general investigations, the related securities and whistleblower cases and importantly Plaintiffs' counsels' discussions with Home City's counsel in the course of their arms length negotiations." In re Packaged Ice Antitrust Litig., No. 08–01962, 2010 WL 3070161, at * 6 (E.D. Mich. Aug. 2, 2010). . . . Moreover, Plaintiffs have now had the opportunity to depose Keith Corbin, an alleged major player in the market allocation scheme, and to examine documents that were produced in advance of Mr. Corbin's deposition. Class Counsel represents that their evaluation of the reasonableness of the Settlement Agreement with Home City has not changed as a result of that deposition. Class Counsel has been provided information by Home City's attorneys in the process of negotiations and in consultation with outside experts that have led Class Counsel to the conclusion that this settlement is in the best interests of the Settlement Class.

In re Packaged Ice Antitrust Litig., 08-MD-01952, 2011 WL 717519 at *11 (E.D. Mich. Feb. 22, 2011).

49. Based on Class Counsel's investigation, consultations with economists, and knowledge of applicable law, Class Counsel respectfully submits that it had more than sufficient information to guide it in negotiating the settlement presented for approval.

d. Risk of Establishing Liability

50. The risk of establishing liability favors approval. Although Class Counsel believes it would prevail, the Monitor and the Debtors believe that the absence of criminal convictions relating to a nationwide cartel substantially raised the risk that plaintiffs would lose

on liability. The MDL Court found as much. See In re Packaged Ice Antitrust Litig., 2011 WL 717519 at *9 ("The Court concludes that the Settlement Agreement with Home City seeks to resolve a legitimate legal and factual dispute over the alleged nationwide allocation of markets in the packaged ice industry. Plaintiffs state that they remain optimistic about their ultimate chance of success but acknowledge that there is always a risk that Defendants could prevail with respect to certain legal or factual issues. Plaintiffs point out, and the Court notes, that the Department of Justice has closed its investigation of the Packaged Ice industry and, while certainly not dispositive of Plaintiffs' claims, this is a factor which favors settlement.").

51. The risk was further exacerbated in this case because the attorneys general of numerous states conducted their own civil investigation and none of them pursued civil charges or lawsuits, with the exception of the Michigan Attorney General (the guilty pleas covered Michigan) who settled with the Debtors before bringing suit.

52. The MDL Court's decision is consistent with the many decisions holding that the risk of establishing liability is substantial in the absence of criminal convictions. See, e.g., City of Detroit v. Grinnell Corp., 495 F.2d 448, 455 (2d Cir. 1974) ("[T]he only truly objective measurement of the strength of plaintiffs' case is found by asking: Was defendants' liability prima facie established by the government's successful action?") (citation omitted), abrogated on other grounds, Goldberger v. Integrated Res., Inc., 209 F.3d 43 (2d Cir. 2000); Rodriguez v. West Publishing Corp., 563 F.3d 948, 964 (9th Cir. 2009) (finding that district court did not abuse its discretion in considering that "there were no government coattails for the class to ride"); In re Pressure Sensitive Labelstock Antitrust Litig., 584 F. Supp. 2d 697, 701 (M.D. Pa. 2008) ("Risks of establishing liability . . . are substantial .... [when] the criminal investigation that likely instigated this antitrust litigation was concluded without the issuance of

any indictments."); In re NASDAQ Mkt.-Makers Antitrust Litig., 187 F.R.D. 465, 474-75 (S.D.N.Y. 1998) ("[T]he Class does not have the benefit of a prior conviction here, because the Department of Justice chose not to bring a criminal proceeding. Nor does the Class have the benefit of an admissible civil judgment, because the Department of Justice settled its case on July 17, 1996 by consent decree on the very day it was brought. The resulting judgment is a 'consent judgment' for the purposes of the Clayton Act, 15 U.S.C. § 15(a), and therefore it does not establish a *prima facie* case, nor collateral estoppel, in private actions brought on the same issues.").

53. Moreover, because this case was settled at such an early stage — before formal discovery — it was "inherently rife with risk and unpredictability in terms of ultimately prevailing to establish liability. . . ." In re Processed Egg Prods. Antitrust Litig., 284 F.R.D. at 272. The risk was further exacerbated because plaintiffs lost their right to a jury trial.

e. Risk of Establishing Damages

54. The risk of establishing damages in this complex antitrust indirect purchaser case favors approval. Although Class Counsel believes (and the Monitor and Debtors dispute) that it would have been able to establish damages, plaintiffs faced substantial risk for five reasons. First, proving damages in an antitrust case is inherently difficult. Indeed, "the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." In re NASDAQ Mkt.-Makers Antitrust Litig., 187 F.R.D. at 476. Second, the risk is even greater in an indirect purchaser case because plaintiffs would have been required to establish that the overcharge was passed on to them by third parties. See, e.g., In re Graphics Processing Units Antitrust Litig., 253 F.R.D. 478, 499 (N.D. Cal. 2008) ("[T]he problem of proof in an indirect

purchaser case is intrinsically more complex, because the damage model must account for the actions of innocent intermediaries who allegedly passed on the overcharge."). Third, the absence of criminal convictions relating to a nationwide cartel also raised the risk that plaintiffs would be unable to establish damages. See, e.g., In re Pressure Sensitive Labelstock Antitrust Litig., 584 F. Supp. 2d at 702 ("Risks of establishing . . . damages are substantial [when] the criminal investigation that likely instigated this antitrust litigation was concluded without the issuance of any indictments."). Fourth, the early stage of this litigation — before formal discovery — made it "inherently rife with risk and unpredictability in terms of ultimately prevailing to establish . . . damages. . . ." In re Processed Egg Products Antitrust Litig., 284 F.R.D. at 272. Fifth, the risk was exacerbated because plaintiffs lost their right to a jury trial.

f. Risk of Maintaining Class Action Through Trial

55. Were this matter to have proceeding to trial, Class Counsel would have sought class certification under Rules 23(b)(1)(B) of the Federal Rules of Civil Procedure (the "Federal Rules").[7] To do so, Class Counsel would have been required first to establish the prerequisites under Federal Rule 23(a): numerosity, typicality, commonality and adequacy. In granting the Preliminary Approval Order, this Court found these prerequisites were satisfied for the purposes of certifying a conditional settlement class.

56. Second, Class Counsel would have been required to establish the elements that satisfy Federal Rule 23(b)(1)(B), which provides:

> This subdivision is usually applied when a 'limited fund' exists, such that non-class members seeking damages would likely deplete

[7] Were this matter to proceed to trial, Class Counsel would seek class certification pursuant to Federal Rule 23(b)(1)(B). However, federal Rule 23(b)(1)(B) and its Bankruptcy Rule analogue do not apply to the Settlement Agreement because there is no limited fund under the terms of the Settlement Agreement. As such, the Settlement Parties obtained this Court's preliminary certification of the Settlement Class under Bankruptcy Rule 7023(b)(3). As discussed above, by this Motion, the Settlement Parties are seeking this Court's certification of the Settlement Class on a final basis pursuant to Bankruptcy Rule 7023(b)(3).

> the fund and deprive class members of any recovery. Cases in which mandatory class treatment is proper on a limited fund theory have three presumptively necessary characteristics. First, the totals of the fund and the claims against that fund, set definitely at their maximums, demonstrate the inadequacy of the fund to pay all the claims. Second, the whole of the inadequate fund will be devoted to the overwhelming claims. And third, the claimants identified by the common theory of recovery will be treated equitably among themselves.

Baker v. Washington Mut. Fin. Group, LLC, 193 F. App'x 294, 297 (5th Cir. 2006).

57. In this case, Class Counsel filed a claim of at least $463,000,000 and the Debtors' estates have substantially less than that amount available. The first element is therefore satisfied. The bankruptcy courts will ensure the second and third elements are met — the inadequate fund will be devoted to the overwhelming claims and claimants will be treated equitably.

58. Accordingly, Class Counsel does not believe maintaining class certification through trial would have been risky in this case. This does not preclude approval, however, because "[n]ot every factor need weigh in favor of settlement in order for the settlement to be approved by the Court." In re Processed Egg Prods. Antitrust Litig., 284 F.R.D. at 305.

g. Ability of Defendants to Withstand Greater Judgment

59. The Debtors could withstand a greater judgment than the Maximum Settlement Amount, although not a judgment in full amount of the Proof of Claim. Even considering the claims against the estate including payment of the Maximum Settlement Amount, the Monitor believes that there will be excess funds to distribute to the unitholders after Proven Claims are paid in full and other estate obligations are satisfied. This factor, however, does not impede approval of the settlement. See, e.g., In re Linerboard Antitrust Litig., 321 F.

Supp. 2d 619, 632 (E.D. Pa. 2004) (approving settlement where defendants could withstand a greater judgment).

h. Range of Reasonableness and Attendant Risks of Litigation

60. Application of the final Girsh factors favors approval of the Settlement Agreement. "The last two Girsh factors evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case. The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." In re Warfarin Sodium Antitrust Litig., 391 F.3d at 538 (3d Cir. 2004).

61. Class Counsel respectfully submits that this settlement compares favorably to the direct purchasers' settlement with Arctic Glacier that the MDL Court approved. In re Packaged Ice Antitrust Litig., 08-MDL-01952, 2011 WL 6209188 (E.D. Mich. Dec. 13, 2011). This Settlement Agreement resolves the indirect purchasers' claim for a value on par with the direct purchasers' settlement when measured against the average amount obtained per state. The indirect purchaser settlement of $3,950,000 covers sixteen (16) states and represents a settlement value of $246,875 per state on average. By comparison, the direct purchasers' settlement of $12,500,000 covers all fifty (50) states and represents a settlement value of $250,000 per state on average. Class Counsel respectfully submits that this result is remarkable.

62. The fact that the indirect purchasers filed a claim of approximately $463,000,000 and settled for $3,950,000 does not alter this conclusion. Antitrust class actions frequently settle for a small fraction of the total liability claimed and "'there is no reason, at least in theory, why satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.'" In re Remeron End-Payor Antitrust Litig., 2005

WL 2230314 at *24 (quoting Detroit v. Grinnell Corp., 495 F.2d at 455 n.2). It should also be noted that courts look to single damages (and not the treble damages sought) when weighing this factor. See, e.g., In re Remeron End-Payor Antitrust Litig., 2005 WL 2230314 at *24 ("In order to evaluate the propriety of an antitrust class action settlement's monetary component, a court should compare the settlement recovery to the estimated single damages. In re Ampicillin Antitrust Litig., 82 F.R.D. 652, 654 (D.D.C.1979)" (citing Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir.1974)).

63. Class Counsel respectfully submits that the settlement is favorable in light of the best possible recovery when measured against all the attendant risks — *i.e.*, the risks of establishing liability and damages, particularly considering the complexity of this multistate indirect purchaser antitrust litigation and the absence of a criminal conviction relating to a nationwide cartel. Accordingly, this factor should favor approval.

4. Analysis of the Relevant Prudential Factors Favors Approval of the Settlement Agreement

a. Ability to Assess Probable Outcome of a Trial

64. Class Counsel respectfully submits that this Prudential factor favors approval. As set forth above, Class Counsel has conducted a lengthy investigation and informed the Court of the nature of the issues in this complex multistate antitrust indirect purchaser class action. The substantive issues are well known and mature with ample precedent discussing them. Although Class Counsel believes it would prevail, the risk of establishing liability and damages is inherent in these types of case generally and under the circumstances of this case for the reasons set forth set forth above.

b. Existence and Probable Outcome of Claims by Other Classes and Subclasses

65. This Prudential factor favors approval. The direct purchasers are the only other class and they settled on the basis of $250,000 per state on average. Class Counsel respectfully submits that this settlement for sixteen (16) states at a value of $246,875 per state on average compares favorably.

c. Opt-Out Rights

66. As required by the Preliminary Approval Order, any Class Member has the right to opt out of the Settlement Class, provided that such Class Member submits a valid and timely Opt-Out Letter.

d. Reasonableness of Attorneys' Fees

67. Class Counsel represents that one-third of the Maximum Settlement Amount is reasonable compensation, as courts have frequently awarded fees of one-third in antitrust cases and "there have been several [antitrust] cases where courts have awarded more than 40% of the settlement fund for fees and expenses." In re Ampicillin Antitrust Litig., 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding 45% in fees and expenses of $7.3 million settlement fund); see also In re Flonase Antitrust Litig., 08-CV-3149, 2013 WL 2915606 *8 (E.D. Pa. June 14, 2013) ("also in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees.") (awarding 33.3% of $150 million settlement fund); In re Remeron Direct Purchaser Antitrust Litig., 2005 WL 3008808 (awarding 33.3% from $75 million settlement fund) (citing four other antitrust cases of fees of one-third with common funds ranging from $25 million to $220 million); In re Lithotripsy Antitrust Litig., 98 C 8394, 2000 WL 765086 at *2 (N.D. Ill. June 12, 2000) ("33.3% of the fund plus expenses is well within the generally accepted range of the attorneys fee awards in class-action antitrust lawsuits"). Other

antitrust cases (not cited by Flonase or Remeron) include In re Ethylene Propylene Dien Monomer (EPDM) Antitrust Litig., No. 3:03 MD 1542 (SRU) (D. Conn Oct. 10, 2010) (33.3% of $25 million settlement); In re Foundry Resins Antirust. Litig., No. 04–mdl–1638 (S.D. Oh. Mar. 31, 2008) (33.3% of a $14.1 million settlement); In re Auto. Refinishing Paint Antitrust Litig., MDL NO 1426, 2008 WL 63269 (E.D. Pa. Jan. 3, 2008) (33.3% of $39 million settlement fund).[8]

68. Class Counsel represents that the same is true in other types of class actions: "[a] one third fee from a common fund has been found to be typical by several courts within this Circuit which have undertaken surveys of awards within the Third Circuit and others." In re Remeron Direct Purchaser Antitrust Litig., CIV.03-0085 FSH, 2005 WL 3008808 (D.N.J. Nov. 9, 2005). One district court in this Circuit observed, "[s]cores of cases exist where fees were awarded in the one-third to one-half of the settlement fund." In re Amerisoft Sec. Litig., 210 F.R.D. 109, 134 (D.N.J. 2002). See also New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc., 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("[A] one-third fee from a common fund case has been found to be typical by several courts") (citations omitted), aff'd, 534 F.3d 508 (6th Cir. 2008); Lewis v. Wal-Mart Stores, Inc., 02-CV-0944 CVE FHM, 2006 WL 3505851 at *1 (N.D. Okla. Dec. 4, 2006) ("A contingency fee of one-third is relatively standard in lawsuits that settle before trial").

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[8] Antitrust cases where the fee awards were less than one-third generally involved settlement funds substantially larger than the $3.95 million fund here — an important consideration in the fee award analysis as explained herein. Even in many of those cases, fees were 30% of the settlement fund. See, e.g., In re Linerboard Antitrust Litig., 2004 WL 1221350 (E.D. Pa. June 2, 2004) (30% of $202 million settlement); Nichols v. SmithKline Beecham Corp., CIV.A.00-6222, 2005 WL 950616 (E.D. Pa. Apr. 22, 2005) (30% of $75 million settlement); In re Plastic Additives Litig., MDL No. 1684 (E.D. Pa. Apr. 10, 2007) (30% of $46.8 million settlement fund); In re Processed Egg Prods. Antitrust Litig., 2012 WL 5467530 (E.D. Pa. Nov. 9, 2012) (30% of $25 million settlement).

69. These figures mask a pattern of fee awards shrinking in percentage terms as settlement amounts increase. See, e.g., In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 302 (3d Cir. 2005) ("Our jurisprudence confirms that it may be appropriate for percentage fees awarded in large recovery cases to be smaller in percentage terms than those with smaller recoveries.");[9] Cullen v. Whitman Med. Corp., 197 F.R.D. 136, 148 (E.D. Pa. 2000) ("In general, as the size of the settlement fund increases the percentage award decreases.") (awarding 33.3% of settlement fund valued at $7.2 million); In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 486 (S.D.N.Y 1998) ("[A]bsent unusual circumstances, the percentage will decrease as the size of the fund increases") (citations omitted). This sliding scale approach reflects that "[i]t is generally not 150 times more difficult to prepare, try and settle a $150 million case than . . . a $1 million case." Id.; see Erie Cnty. Retirees Ass'n v. Cnty. of Erie, Pennsylvania, 192 F. Supp. 2d 369, 381 (W.D. Pa. 2002) ("Fee awards ranging from thirty to forty-three percent have been awarded in cases with funds ranging from $400,000 to $6.5 million, funds which are comparatively smaller than many.") (awarding 38% fee).[10]

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[9] Accordingly, the three studies cited by the Rite Aid court stating that the average fees range from 25 to 31.7 percent are inapposite because they are based on common funds substantially greater than the $3,950,000 fund here. Id. (one study was of settlements exceeding $10,000,000 and another study was of settlements between $100,000,000 and $200,000,000).

[10] The settlement agreement also provides for a Class Counsel Charge of $200,000 against the Arctic Glacier estate. As described in the Preliminary Approval Motion, the Class Counsel Charge was intended to facilitate Class Counsel's effective participation in these complex, cross-border insolvency proceedings. This provision does not alter the conclusion that the attorneys' fees clause in the Settlement Agreement is reasonable. The direct purchaser class received a $100,000 charge against the Arctic Glacier estate. Moreover, even if one adds the Class Counsel charge to the one-third in attorneys' fees (resulting in a total fee award of approximately 38.4 percent), that percentage is reasonable in light of, among other things, the relatively small size of the settlement fund. See, e.g., Erie Cnty. Retirees Ass'n v. Cnty. of Erie, Pennsylvania, 192 F. Supp. 2d 369, 381 (W.D. Pa. 2002) ("Fee awards ranging from thirty to forty-three percent have been awarded in cases with funds ranging from $400,000 to $6.5 million, funds which are comparatively smaller than many.") (awarding 38% fee), the complexity of the case and the risk of non-payment due to the inherent risk of establishing liability and damages.

e. Claims Processing Procedure

70. As will be described in more detail below, Class Counsel respectfully submits that the procedures and deadlines governing the submission of Claim Forms and the distribution scheme for holders of Approved Claims is more than fair and reasonable. It allows for a generous recovery. The parties have provided for a fair method to process claims. The Claim Form will be published in *USA Today* and *Parade Magazine*, with an aggregate estimated readership of more than 58,000,000, and will be made available on the docket of the MDL and the Monitor's, Class Counsel's, and the Debtors' respective websites. Claimants who submit claims for the purchase of three (3) to ten (10) bags of packaged ice will receive $6.00 and do not have to submit proof of purchase.[11] Claimants who submit claims for the purchase of more than ten (10) bags of packaged ice will have to submit proof of purchase for each bag exceeding ten (10) bags and will receive $6.00 plus $0.60 for each bag of packaged ice more than 10 bags.[12] Packaged ice costs approximately $2 per bag. The amount of recovery thus provides for a recovery of 33.3% to 300% (after trebling). Such a recovery is generous and particularly so because certain states do not allow for treble damages. See, e.g., In re Warfarin Sodium Antitrust Litig., 212 F.R.D. 231, 260 (D. Del. 2002) (applying a 15% loss figure to claimants from all states and noting "[i]t is purely speculative that claimants from indirect purchaser states could anticipate a greater recovery than claimants from other states"), aff'd, 391 F.3d 516 (3d Cir. 2004).

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11 To avoid administrative expenses that cannot be justified by the amount of the recovery, class members (if any) who purchased only one or two bags do not receive a distribution. Courts routinely approve allocation plans with "*de minimis* thresholds for payable claims [as] beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds, often at $10." Sullivan v. DB Investments, Inc., 667 F.3d 273, 328 (3d Cir. 2011) (citations omitted).

12 In the event the amount of claims exhausts the settlement fund, the recoveries will be reduced proportionally. Such an allocation method is fair and reasonable.

71. Given the above, and as evidenced by the Final Approval Declaration, Class Counsel respectfully submits that the Settlement Agreement is fair, reasonable, and adequate within the meaning of Bankruptcy Rule 7023(e)(2) and should be approved by this Court.

II. APPROVAL OF PROCEDURES FOR SUBMISSION OF CLAIM FORMS AND FORM AND MANNER OF NOTICE THEREOF

72. By this Motion, the Settlement Parties request that this Court approve the procedures for the submission of claim forms, as agreed to in Section 7.1 of the Settlement Agreement. The Settlement Parties have agreed and propose that the following rules apply with respect to the submission of Claim Forms:

(a) Settlement Class Members shall submit their completed Claim Form to the Claims Administrator on or before June 12, 2014 at 4:00 p.m. (prevailing Eastern Time) (the "Submission Deadline"). Settlement Class Members that fail to submit a completed Claim Form on or before the Submission Deadline shall be forever barred, estopped, and enjoined from asserting any Claim against the Maximum Settlement Amount Reserve, and the Monitor, the Applicants, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

(b) The Claims Administrator shall only accept Claim Forms sent by mail, hand delivery, facsimile, telecopy, electronic mail transmission, or other electronic means. The Claims Administrator shall not accept or honor any Claim Forms that are not postmarked or delivered (if by means other than mail) by a date that is on or before the Submission Deadline.

(c) The Claim Forms shall be executed under penalty of perjury in accordance with 11 U.S.C. §§ 152 and 3571.

(d) Each Settlement Class Member may only submit one Claim Form and only one Claim Form may be submitted per household. Submission of more than one Claim Form per person and/or household shall render the second, and any subsequent, Claim Form invalid.

(e) If a Settlement Class Member mistakenly transmits a Claim Form to Class Counsel on or prior to the Submission Deadline, Class Counsel shall promptly forward such Claim Form to the Claims Administrator, and such Claim Form shall be considered timely by the Claims Administrator.

(f) No Settlement Class Member may submit an Opt-Out Letter and a Claim Form, and if a Settlement Class Member submits both an Opt-Out Letter and a Claim Form, the Claim Form will govern.

(g) Each Settlement Class Member who submits a Claim Form shall be deemed to have submitted to the jurisdiction of this Court for the purposes of its Claim.

(h) The Claims Administrator shall provide a Settlement Class Member with a reasonable opportunity to correct an incomplete Claim Form. The Claim of any Settlement Class Member who, despite such opportunity, fails to correct an incomplete Claim Form will be invalid and such Settlement Class Member shall be forever barred, estopped, and enjoined from asserting such claim against the Maximum Settlement Amount Reserve, and the Monitor, the Applicants, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

(i) Within ten (10) days after the Submission Deadline, the Claims Administrator shall provide a spreadsheet to the Settlement Parties that contains information sufficient to determine: (a) which Claimants submitted a Claim Form; (b) which submitted Claim Forms are valid and timely and which are not; (c) which Claims the Claims Administrator proposes to treat as Approved Claims; (d) the amount proposed to be paid to each Approved Claimant; and (e) which Claim Forms the Claims Administrator has denied and the reasons for the denial.

(j) The Claims Administrator shall retain all Claim Forms (including, as applicable, the envelopes with the postmarks) received from Claimants, and shall make copies or the originals available to Class Counsel, the Monitor, and/or the Applicants upon request.

73. Annexed to the U.S. Approval Order as Exhibits B and C are copies of the Final Approval Notice (which also serves as the Claim Form) and the revised Long Form Notice (the "Final Long Form Notice"),[13] respectively. Both notices describe the nature of the action, define the Settlement Class, describe the general terms of the settlement, direct potential Settlement Class Members to websites containing detailed information and pleadings, and inform potential Settlement Class Members of the deadlines and procedures governing the submission of Claim Forms. The Settlement Parties, with the assistance of the Claims Administrator, have

[13] The Long Form Notice approved by this Court in the Preliminary Approval Order has been revised to include information concerning the deadlines and procedures governing the submission of Claim Forms set forth in the U.S. Approval Order.

prepared the Final Approval Notice based upon claim forms that have been approved in other settlements related to the MDL. As such, the Settlement Parties respectfully request that this Court approve the Final Approval Notice (Claim Form) and the Final Long Form Notice.

74. The Settlement Parties have agreed to a notice plan that is reasonable under the circumstances and that is reasonably calculated to reach as many potential Settlement Class Members as possible. Within three (3) business days after the entry of the U.S. Approval Order, the Settlement Parties shall: (a) post the Final Approval Notice and Final Long Form Notice on the respective websites of the Monitor, the Claims Administrator, and the Debtors' noticing agent; (b) serve the Final Approval Notice via first-class mail on (i) the Office of the United States Trustee for the District of Delaware, (ii) certain parties to the MDL identified by Class Counsel, (iii) all persons entitled to receive notice pursuant to this Court's *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Docket No. 30] (the "Form and Manner Order") and Bankruptcy Rule 2002, (iv) the U.S. Attorney's Office for the District of Delaware, (v) the clerk of the MDL Court, and (vi) the attorneys general of all fifty (50) states; and (c) file the Final Approval Notice on the docket of the MDL for service through the MDL's electronic case filing system (ECF).

75. In the interest of ensuring that as many potential members of the Settlement Class as possible receive notice of the Submission Deadline, and in light of the scope of the Settlement Class, the Settlement Parties have determined that it is prudent and in the best interests of the Debtors and all of their creditors and stakeholders to give additional notice by publication. Thus, in accordance with Bankruptcy Rule 7023(e)(1) within ten (10) calendar days after the U.S. Approval Order becomes a Final Order, the Settlement Parties shall (a) commit to publish the Final Approval Notice in *USA Today*; and (b) commit to publish the Final Approval

Notice in *Parade Magazine*, with each such publication to occur no later than thirty (30) calendar days after the U.S. Approval Order becomes a Final Order.

76. By publishing the Final Approval Notice in both *Parade Magazine* and *USA Today*, the Preliminary Approval Notice will appear in approximately 640 newspapers throughout the country with an aggregate circulation of close to 34,000,000 copies and will be expected to reach more than 58,600,000 readers.

77. Due to its circulation numbers, *Parade Magazine* is a commonly used publication for providing notice of class action settlements. However, *Parade Magazine*'s publication schedule requires final proofs and non-refundable payment no less than twenty-seven (27) days prior to publication. Based upon estimates provided by the Claims Administrator, publication of the Final Approval Notice in *Parade Magazine* will cost approximately $310,000. Given *Parade Magazine*'s publication schedule, the Monitor (after consultation with the Debtors and Class Counsel) has determined to wait until it is satisfied that it will not be required to re-publish notice before committing to publication in *Parade Magazine*. As described below, the Settlement Parties believe this timing is reasonable considering the special facts and circumstances surrounding the Canadian Proceeding and the Chapter 15 Cases.

78. Under the anticipated timeframe, potential members of the Settlement Class will have **no less than** (a) ninety-nine (99) days' notice of the Submission Deadline through hard-copy mailing, website publication, and the MDL docket; (b) sixty-two (62) days' notice of the Submission Deadline through publication in *USA Today* (assuming the U.S. Approval Order is not appealed); and (c) sixty (60) days' notice of the Submission Deadline through publication in *Parade Magazine* (assuming the Preliminary Approval Order is not appealed). Finally, the efforts undertaken by the Settlement Parties to resolve the issues raised

by the Proof of Claim have been well-publicized in various pleadings and court reports previously filed in the Canadian Proceeding and these Chapter 15 Cases. Under the circumstances, the Settlement Parties request that this Court find that the notice program is sufficient under applicable Bankruptcy Rules and the minimum due process requirements of the Constitution of the United States.

79. The Settlement Parties submit that the foregoing procedures, and form and manner of notice thereof, provide for a fair and equitable claims process and are consistent with all relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

III. APPROVAL OF AUDIT AND CHALLENGE PROCEDURES

80. By this Motion, the Settlement Parties request that this Court approve the audit and challenge procedures, as agreed to in Section 7.2 of the Settlement Agreement. As such, the Settlement Parties propose that the following rules apply with respect to the audit and challenge regarding the Claims Administrator's determination concerning the allowability of any Claim:

(a) The Settlement Parties shall each have the right to audit the information provided in the Claim Forms submitted by each Claimant who submits a Claim or Claims in excess of $50.00, and to challenge the Claims Administrator's determinations regarding, among other things, approval or denial of each such Claim Form and the amount the Claims Administrator proposes to pay to each such holder of an Approved Claim.

(b) Within fourteen (14) days of having received the Claim Forms and the Claims Report, the Settlement Parties shall meet and confer regarding any issues that the Monitor, the Debtors, or Class Counsel believe need to be raised with the Claims Administrator. If Class Counsel and counsel for the Debtors and for the Monitor cannot resolve these issues within twenty (20) days of having received the Claims Report, then Class Counsel, the Debtors, and/or the Monitor may provide written notice of their intent to audit the Claims Administrator's determinations with respect to a particular Claim or Claims.

(c) All audits shall be presented to the Claims Administrator and the decision of the Claims Administrator shall be final; provided, however, that any dispute relating to the Claims Administrator's performance of its duties may be

referred to this Court if it cannot be resolved consensually by the Settlement Parties and the Claims Administrator.

(d) Class Counsel, the Debtors, and/or the Monitor may invoke their audit rights by providing written notice to each other and to the Claims Administrator. The notice shall identify the Claim or Claims that are the subject of the audit, and may be accompanied by supporting papers of no more than two (2) pages (excluding exhibits) for each Claim being audited. Within fourteen (14) days of receipt of the notice and supporting papers, the non-auditing party may submit a written response of no more than two (2) pages (excluding exhibits) for each Claim being audited. The Claims Administrator shall decide any audits presented to them within ten (10) days of final submission.

81. The Settlement Parties submit that the foregoing audit and challenge procedures are reasonably tailored for the circumstances of the Chapter 15 Cases, supported by good and valuable consideration, fair and equitable, and consistent with all relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

IV. AUTHORIZATION TO DISTRIBUTE THE NET SETTLEMENT AMOUNT

82. The Settlement Agreement provides the Claims Administrator with the authority, subject to the audit and challenge procedures, to determine whether or not a claim is an Approved Claim. Subject to certain conditions precedent, outlined in Section 8.2 of the Settlement Agreement, on the Payment Date, the Monitor shall distribute the Net Settlement Amount to the Claims Administrator for ultimate distribution to holders of Approved Claims. Only holders of Approved Claims shall be entitled to receive a share of the Net Settlement Amount. The Settlement Parties request that this Court authorize the Claims Administrator to allocate and distribute, within ten (10) days of receipt of the Net Settlement Amount, the Net Settlement Amount in the manner set forth below:

(a) A holder of an Approved Household Claim will receive a cash distribution in the amount of $6.00.

(b) A holder of an Approved Excess Claim will receive a cash distribution in the amount of $6.00 for the first ten bags and an additional cash distribution in the amount of $0.60 per bag thereafter.

(c) If the total amount claimed pursuant to (a) and (b) above, including any Incentive Awards that may be approved by separate Order, exceeds the Net Settlement Amount, the Approved Claims will be paid from the Net Settlement Amount on a pro rata basis per bag of ice claimed.

83. The Settlement Parties propose that all distributions to Approved Claimants un-cashed for a period of one hundred twenty (120) days after the date of the distribution thereof shall be deemed unclaimed property and any entitlement of any Approved Claimant to such distributions shall be extinguished and forever barred. All such unclaimed property shall escheat in accordance with applicable law.

84. The Settlement Parties submit that the foregoing distribution scheme is fair and equitable and consistent with all relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

V. THE RELEASES AND EXCULPATIONS PROVIDED BY THE SETTLEMENT CLASS ARE PROPER

85. Pursuant to Section 9.1 of the Settlement Agreement, the Settlement Class Members, other than those who submit valid and timely Opt-Out Letters (the "Releasing Settlement Class Members"), shall, in exchange for the consideration being provided pursuant to the Settlement Agreement, grant a comprehensive release of certain claims held or that may be held against the Released Parties.[14] Similarly, in exchange for the good and valuable consideration, the Releasing Settlement Class Members waive any and all rights or benefits that they as individuals or the classes may now have in connection with the Released Claims under

[14] Section 2.54 of the Settlement Agreement defines "Released Parties" as the Debtors, the Chief Process Supervisor, the Monitor, and any of their respective current or former direct or indirect subsidiaries, parent entities, affiliates, predecessors, insurers, agents, counsel, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders, including without implied limitation Frank Larson, Keith Corbin, and Gary Cooley, including their respective pension, profit sharing, savings, health, and other employee benefit plans, or personal or other assets of any nature, and those plans' respective trustees, administrators, and fiduciaries.

the terms of Section 1542(a) of the California Civil Code or similar statute or common law rule in effect in any other jurisdiction.

86. In addition, Section 9.3 of the Settlement Agreement provides that none of the Exculpated Parties[15] shall have or incur any liability to any holder of any Claim for any act or omission in connection with, or arising out of the negotiation and execution of the Settlement Agreement, except for any person's fraud or willful misconduct, as determined by a Final Order.

87. Notice of the releases and the exculpations was provided to the Releasing Settlement Class Members through publication of the Preliminary Approval Notice and the posting of the Long Form Notice as approved by this Court in the Preliminary Approval Motion. In particular, the Preliminary Approval Notice, which was published in *USA Today* and in *Parade Magazine* notified potential members of the Settlement Class that the consideration being provided pursuant to the Settlement Agreement was in exchange for the "Settlement Class's release of certain claims against Arctic Glacier and certain other parties." The Preliminary Approval Notice directed readers to the websites of the Monitor, the Debtors, and Class Counsel, where both the Settlement Agreement and the Long Form Notice were available. The Long Form notice contained a complete description of the releases and exculpations. Additionally, the Preliminary Approval Notice and Long Form Notice each provided a toll-free number for information concerning the Settlement. As evidenced by the Fourteenth Report and affidavits of service filed with this Court [Docket Nos. 261 and 262], notice of the releases and exculpations was provided in the form and manner required by the Preliminary Approval Order. As of the

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[15] Section 2.33 of the Settlement Agreement defined "Exculpated Parties as: (a) the Debtors and their respective directors, officers, employees, counsel, financial advisors, the Chief Process Supervisor, and other professionals who served in such capacity during the course of the Canadian Proceeding and/or the Chapter 15 Cases, each solely in its capacity as such; and (b) the Monitor and its directors, officers, employees, counsel, financial advisors, and other professionals who served in such capacity during the course of the Canadian Proceeding and/or the Chapter 15 Cases, each solely in its capacity as such.

date of this Motion, no potential member of the Settlement Class has submitted an Opt-Out Letter or otherwise indicated a desire to avoid being bound by the terms of the releases and exculpations.

88. The releases and exculpations contained in the Settlement Agreement are fully consensual, supported by good and valuable consideration, and should be approved by this Court. The releases and exculpations are in the best interests of the Settlement Class because without the releases and exculpations, and the finality and certainty they provide, the Debtors and the Monitor would not have entered into the Settlement Agreement and would not voluntarily provide any consideration to members of the Settlement Class. Likewise, the releases and exculpations benefit the Debtors by providing certainty and finality with regard to the Proof of Claim. As such, the releases and exculpations contained in the Settlement Agreement are consistent with applicable law and should be approved by this Court.

NOTICE

89. Notice of this Motion will be provided to (a) all persons to whom notice is required pursuant to this Court's *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Docket No. 30] and (b) certain parties to the MDL who have been identified by Class Counsel. In light of the nature of the relief requested herein, the Settlement Parties submit that no other or further notice of this Motion is necessary or required.

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CONCLUSION

WHEREFORE, the Settlement Parties respectfully request that this Court enter the U.S. Approval Order, in substantially the form annexed hereto as Exhibit B, granting the relief requested herein and other and further relief as this Court deems just and proper.

Dated: Wilmington, Delaware
February 6, 2014

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Dated: Wilmington, Delaware
February 6, 2014

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Dated: Wilmington, Delaware
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Co-Counsel to the Settlement Class

EXHIBIT A

Proof of Claim

PROOF OF CLAIM FORM AGAINST THE ARCTIC GLACIER PARTIES

1. Name of Arctic Glacier Party or Parties (the "Debtor"):

Debtor: Arctic Glacier Income Fund, Arctic Glacier, Inc., Arctic Glacier International, Inc.

2a. Original Claimant (the "Claimant")

Legal Name of Claimant

Wild Law Group PLLC, as Class Representative for Indirect Purchaser Claimants

Name of Contact

Matthew S. Wild (Managing Member)

Address

121 Reynolda Village, Suite M

Winston-Salem, North Carolina 27106

Phone (914) 630-7500

email mwild@wildlawgroup.com

2b. Assignee, if class been assigned (not applicable)

3. Amount of Claim:

U.S. Dollars $463,577,602 (Unsecured Claim)

4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

Pursuant to agreement with the Monitor, no documentation is submitted at this time

5. Certification

1. I am the authorized representative of the Claimants.
2. I have knowledge of all the circumstances connected with this Claim.

3. The Claimants assert this Claim against the Debtors as set out above.
4. **Pursuant to an agreement with the Monitor, no documentation is submitted at this time.**

Signature: MS

Name: Matthew S. Wild

Witness:

Signature: Lorraine E. Marovich

Print: LORRAINE E. MAROVICH

TABLE OF CONTENTS

I. INTRODUCTION

Wild Law Group PLLC ("WLG"), as Class Representative, submits this proof of claim on behalf of a class of retail purchasers of packaged ice (the "Class"). The Class purchased packaged ice produced by Arctic Glacier ("Arctic"), Reddy Ice Corporation ("Reddy") and Home City Ice Company ("Home") in Michigan, North Carolina, Minnesota, New York, Wisconsin, California, Tennessee, Nevada, Maine, Arizona, New Mexico, Iowa, Nebraska, Massachusetts, Kansas and Mississippi (the "Relevant States") between January 1, 2001 and June 30, 2012 (the "Relevant Period").

This supplement to the proof of claim provides a factual summary of the bases for the claims, legal grounds for the claims, the grounds that mandate certification of a class and an estimate of damages to which the Class is entitled.

The Class is entitled to all of the damages sought from Arctic Glacier Income Fund, Arctic Glacier, Inc. and Arctic Glacier International, Inc., jointly and severally, for all of the damages caused by themselves and each of their Coconspirators.[1]

II. FACTUAL SUMMARY

The facts are set forth at length in the Consolidated Class Action Complaint ("CCAC") filed in *In re Packaged Ice Antitrust Litig*, 08-md-1952 (E.D. Mich.) (the "MDL Court"), Dkt #367 (annexed at Tab 1), and in the MDL Court's decision denying motions to dismiss, *In re Packaged Ice Antitrust Litig.*, 723 F. Supp.2d 987 (E.D. Mich. 2010) (annexed at Tab 2). The CCAC does not, however, set forth all of the evidence. As "[c]omplaints need not do more than

[1] *See, e.g., Paper SystemsInc. v. Nippon Paper Industries Co., Ltd.*, 281 F.3d 629, 634 (7th Cir. 2002) ("If [defendant] participated in a cartel . . . then it is jointly and severally liable for the cartel's entire overcharge. That the plaintiffs did not buy from [defendant] directly, or at all, does not matter").

narrate a plausible claim for relief," however, the CCAC does not set forth the evidence.[2] The facts are briefly summarized below.

Arctic, Reddy and Home (collectively, the "Coconspirators") – producers of packaged ice in the United States and Canada, which have a combined market share of nearly 70 percent – had a long standing agreement not to compete with each other. In furtherance of their cartel, the Coconspirators agreed to, and did in fact, fix and inflate prices, allocate territories and customers, acquire competitors, refuse to compete and otherwise commit a variety of unlawful and anticompetitive acts. The purpose and effect of the cartel has been to fix, raise, maintain and stabilize the prices paid for ice sold in plastic bags or large blocks ("packaged ice") throughout the United States. Evidence of the existence of the conspiracy includes, but is not limited to, admissions made by participants in the conspiracy, guilty pleas by two of the defendants to a violation of Section 1 of the Sherman Act, guilty pleas of three of Arctic's former officers (each of whom had nationwide responsibility), issuance of a search warrant for Reddy's headquarters even though it does no business in a region that overlaps with Arctic and Home, Reddy's and Arctic's suspension of officers who they believe may have participated in the cartel, the Coconspirators' attempts to intimidate and bribe a whistleblower, Arctic Glacier's bribery of its former officers to induce them not to reveal the facts underlying the conspiracy to plaintiffs in the civil action, and economic behavior that would have been inconsistent with each Coconspirator's self-interest or implausible in the absence of the conspiracy.

Although Arctic and Home pleaded guilty to a conspiracy involving territorial and customer allocations only in Southeast Michigan and the Detroit metropolitan area and Reddy was not prosecuted,[3] the MDL Court held, the complaint alleges "enough factual content to

[2] *See, e.g., Morrison v. YTB Intern., Inc.*, 649 F.2d 533, 538 (7th Cir. 2011).
[3] The plea agreements are annexed at Tabs 3 and 4.

plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and territories . . . and raises a reasonable expectation that discovery will reveal evidence of illegal agreement."[4] In addition, while the plea agreements admit the conspiracy took place only from January 1, 2001 to March 2008 (the "Plea Period"), the MDL Court, held that the complaint's allegations of "Defendants' ongoing conduct" are "sufficient" to go forward.[5] The Class has not been permitted to take any discovery.

III. SUMMARY OF LEGAL GROUNDS FOR RECOVERY

The federal antitrust laws provide for a monetary recovery only for individuals and businesses that purchased directly from a defendant or its coconspirator.[6] Each of Relevant States, however, has laws that permit indirect purchasers (*i.e.*, individuals or business that purchased from a direct purchaser) to recover. The legal bases for these claims are set forth in Appendix A. With the exception of Nebraska, the MDL Court has denied the defendants' facial challenges to each of the claims set forth in Appendix A or defendants made no such challenge. The MDL Court never resolved the facial challenge to the Nebraska claim.

IV. SUMMARY OF GROUNDS FOR CERTIFICATION OF THE CLASS

The Class is entitled to certification under the following definition:

> All persons or other legal entities (excluding governmental entities, defendants, their officers, directors, subsidiaries or affiliates), who purchased packaged ice indirectly in the Relevant States from Reddy, Arctic or Home (or their parents, subsidiaries or agents) from January 1, 2001 until June 30, 2012.

Rule 23 of the Federal Rules of Civil Procedure governs class certification. To certify a class under Rule 23, the Supreme Court explained,

> the party seeking certification must demonstrate, first, that: (1) the class is so numerous that joinder of all member is impractical, (2) there are questions of law

[4] 723 F. Supp.2d at 1017.
[5] *In re Packaged Ice Antitrust Litig.*, 779 F. Supp. 2d 642, 668 (E.D. Mich. 2011).
[6] *See Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

> or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class . . . [and s]econd, the proposed class [satisfies] at least one of the three requirements listed in Rule 23(b).[7]

The class action "was designed for situations . . . in which the potential recovery is too slight to support individual suits, but injury is substantial in the aggregate."[8]

As demonstrated below, the Class satisfies these requirements. Further, the Class satisfies Rule 23(b)(1)(b) because a "limited fund" exists.[9]

Numerosity

Rule 23(a)(1) "is satisfied when the proposed class is so large that joinder of all members is impracticable." Although "no minimum number of plaintiffs is required to maintain a suit as a class action," numerosity generally exists "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40. . . ."[10] Here, the Class encompasses millions of consumers and, therefore, the numerosity requirement is satisfied.[11]

Commonality

Rule 23(a)(2) is met if there are "questions of law or fact common to the class."[12] Plaintiffs must demonstrate that the "class members have suffered the same injury."[13] The *Wal-Mart* Court further explained that the "claims must depend upon a common contention . . . [which] will resolve an issue that is central to the validity of each one of the claims in one

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[7] *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2548 (2011).
[8] *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006).
[9] *Baker v. Washington Mut. Fin. Group, LLC*, 193 F. App'x 294, 297 (5th Cir. 2006).
[10] *Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001).
[11] *See, e.g., In re Whirlpool Corp. Front-Loading Washer Products Liab. Litig.*, 678 F.3d 409, 418 (6th Cir. 2012) ("[t]he evidence shows that Whirlpool shipped thousands of Duet washers to Ohio for retail sale. This is sufficient evidence to support the certification of a class of all Ohio residents who purchased a Duet in Ohio"); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 593 (N.D. Cal. 2010) (hundreds of thousands of indirect purchasers met numerosity requirement).
[12] *Wal-Mart*, 131 S.Ct. at 2550–51.
[13] *Wal-Mart*, 131 S.Ct. at 2551.

stroke."[14] At the crux of the commonality requirement is the "capacity of a classwide proceeding to generate common *answers*. . ."[15]

Antitrust cases readily meet the commonality requirement because "proof of the conspiracy is a common question."[16] For this reason, courts have repeatedly found the commonality requirement satisfied in indirect purchaser cases, like the instant case.[17] Here, whether Arctic, Reddy and Home conspired and the conspiracy's scope are common questions that satisfy the commonality requirement.

Typicality

Rule 23(a)(3) requires that the "named plaintiffs" claims are "typical of the claims of the class." In certifying an indirect purchaser class action, one court explained, "[q]uestions of class typicality focus on whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct."[18]

Courts routinely hold Rule 23(a)(3) satisfied in indirect purchaser and consumer class actions like this case.[19] Here, the Named Claimants readily satisfy the typicality requirement

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[14] *Id.*

[15] *Id.*; *see also Whirlpool*, 678 F.3d at 418 ("The . . . inquiry focuses . . . on whether a class action will generate common answers that are likely to drive resolution of the lawsuit").

[16] *In re Scrap Metal Antitrust Litigation*, 527 F.3d 517, 535 (6th Cir. 2008).

[17] *See, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 298 (3d Cir. 2011) (holding commonality was satisfied in indirect purchaser action because "[a] common answer[] to the question[] about [the defendant's] alleged misconduct would common as to all of the class members, and thus would inform resolution of the litigation . . ."). *In re Flonase Antitrust Litigation*, No. 08-CV-3301, 2012 Westlaw 2277840, at *8 (E.D. Penn. June 18, 2012) (holding that commonality was satisfied in indirect purchaser action because "[r]esolving the allegations surrounding [the defendant's] alleged conduct . . . will resolve issues that are central to the validity of each one of the claims in one stroke"); *TFT-LCD*, 267 F.R.D. at 593 (holding that commonality was satisfied in indirect purchaser action because "[w]here an antitrust conspiracy has been alleged, . . . the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist") (citations omitted); *SRAM*, 264 F.R.D. at 612 (same).

[18] *TFT-LCD*, 267 F.R.D. at 593.

[19] *See, e.g., Flonase*, 2012 Westlaw 2277840, at *8 (typicality satisfied because "Indirect Purchasers allege that the same unlawful conduct injured both the class representatives"); *TFT-LCD*, 267 F.R.D. at 593; *SRAM*, 264 F.R.D. at 609 (typicality satisfied because "all of the IP Plaintiffs are indirect purchasers of SRAM who allege that Defendants engaged in a price-fixing conspiracy").

because they each purchased packaged ice at retail and paid too much as a result of the conspiracy.

Adequacy

Rule 23(a)(4) permits certification if "the representative parties will fairly and adequately protect the interests of the class." There are "two criteria for determining adequacy of representation: "1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel."[20]

WLG is qualified, and they have also brought on board a team of highly experienced co-counsel. Indeed, WLG successfully prosecuted these cases to favorable conclusions against Reddy and Home.[21]

Each of the 20 Named Claimants satisfies the adequacy requirement. Each of them will be able (1) to prove his or her purchase of at least one bag of ice that originated from one of the defendants, and (2) to serve effectively as a representative of the class.[22]

Limited Fund

The Class is entitled to certification under Rule 23(b)(1)(B) because the recovery is limited to a "limited fund." Characteristics of a limited fund class action are:

> First, the totals of the fund and the claims against that fund, set definitely at their maximums, demonstrate the inadequacy of the fund to pay all the claims. Second, the whole of the inadequate fund will be devoted to the overwhelming claims.

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[20] *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012).

[21] The MDL Court recognized the expertise of Messrs. Wild, Wild and Perrin when it appointed them interim lead and liaison counsel. *In re Packaged Ice Litig.*, 08-MD-01952, 2009 WL 1518428 at *3 (E.D. Mich. June 1, 2009).

[22] They are unquestionably capable of satisfying their obligations to the Class. Three of them are attorneys, including one state prosecutor and one litigator who effectively served on the Official Committee of Unsecured Creditors in the Reddy bankruptcy. Others include two financial controllers for private corporations, a trust officer for a bank and a retired minister. Six of them have post-graduate degrees, including one class representative with an M.B.A. from the University of Rochester and another class representative with a post-graduate divinity degree from Duke University. Tab 5 identifies each Named Claimant, the action that he/she brought and the states in which he/she purchased packaged ice.

> And third, the claimants identified by the common theory of recovery will be treated equitably among themselves.[23]

Here, the Monitor reports that Arctic has total proceeds of $130,000,000 to satisfy administrative expenses and unsecured claims. The Class' claim of more than $400,000,000 readily exceeds the $130,000,000 fund.[24] Accordingly, the Class meets the Rule 23(b)(1)(B) certification requirements.

[23] *Baker v. Washington Mut. Fin. Group, LLC*, 193 F. App'x 294, 297 (5th Cir. 2006) (citations omitted).

[24] The other requirements, *i.e.*, (1) the whole of the inadequate fund will be devoted to the overwhelming claims and (2) the Class members will be treated equitably, are also met. Here, the CCAA proceedings ensure satisfaction of these elements.

V. SUMMARY OF DAMAGES THE CLASS' SUFFERED DURING PLEA PERIOD

The Class is entitled to three times the overcharge they absorbed by reason of the conspiracy. Calculation of indirect purchaser antitrust damages thus requires an estimate of (1) the Coconspirators' sales through retailers to the Class during the Relevant Period, (2) the overcharge (*i.e.*, the artificial price inflation caused by the conspiracy), and (3) the pass-through rate (*i.e.*, the amount of the overcharge that the retailer passed through to the Class). These estimates are set forth below.[25]

As set forth below, Kansas and Massachusetts have more generous damages measures.

Relevant Sales

With limited exceptions, the Class only has publicly available data to estimate their damages at this time. The estimates rely on the assumptions set forth in Appendix A (which the Class believes favor Arctic). Tables 1-A through 1-C and 2 set forth the Class' estimates of each Coconspirator's sales in the 14 Relevant States (*i.e.* excluding Kansas and Massachusetts) to the Class during the Plea Period.

[25] To be conservative, the Class has limited its estimated damages to the Plea Period. But the Class is entitled to damages for "lingering effects" of the conspiracy, regardless of when the conspiracy ceased.

Table 1-A
Reddy Ice Estimated Revenues
Affected by the Cartel in Indirect Purchaser States Except Kansas and Massachusetts
($ thousands)

Year	Total Revenues‡	% U.S. Ice Products	Ice Revenues	% Sales to Retailers†	$ Sales to Retailers	Indirect States % US	Relevant Revenues
2001	244,247	90%	219,822	73%	160,470	37.4%	60,025
2002	235,660	90%	212,094	73%	154,829	37.4%	57,904
2003	238,188	90%	214,369	73%	156,490	37.4%	58,530
2004	269,725	90%	242,753	73%	177,209	37.4%	66,251
2005	306,255	90%	275,630	73%	201,210	37.4%	75,153
2006	334,950	90%	301,455	73%	220,062	37.3%	82,093
2007	339,038	90%	305,134	73%	222,748	37.3%	82,979
2008*	65,860	90%	59,274	73%	43,270	37.2%	16,102
						Total:	**499,039**

‡Total revenues reported by Reddy Ice in 10-Ks for various years.
†Reddy Ice percentage of sales to supermarkets, mass merchants, gasoline stations, and convenience stores.
*First quarter sales, assumed to be 20% of reported 2008 total revenues.

Table 1-B
Arctic Glacier Estimated Revenues
Affected by the Cartel in Indirect Purchaser States Except Kansas and Massachusetts
($ thousands)

Year	Total Revenues‡	% U.S. Ice Products	Ice Revenues	% Sales to Retailers†	$ Sales to Retailers	Indirect States % US	Relevant Revenues
2001	91,388	80%	73,110	73%	53,371	37.4%	19,964
2002	91,719	80%	73,375	73%	53,564	37.4%	20,032
2003	97,170	80%	77,736	73%	56,747	37.4%	21,225
2004	114,434	80%	91,547	73%	66,829	37.4%	24,985
2005	156,439	80%	125,151	73%	91,360	37.4%	34,124
2006	219,249	80%	175,399	73%	128,041	37.3%	47,765
2007	234,666	80%	187,733	73%	137,045	37.3%	51,052
2008*	49,396	80%	39,517	73%	28,847	37.2%	10,735
						Total:	**229,882**

‡Arctic Glacier Annual Reports filed with the SEC in various years.
†Reddy Ice percentage of sales to supermarkets, mass merchants, gasoline stations, and convenience stores.
*First quarter sales, assumed to be 20% of reported 2008 total revenues.

Table 1-C
Home City Estimated Revenues
Affected by the Cartel in Indirect Purchaser States Except Kansas and Massachusetts
($ thousands)

Year	Reddy and Arctic Ice Revenues	HC Sales Allocation Ratio‡	Ice Revenues	% Sales to Retailers†	$ Sales to Retailers	Indirect States % US	Relevant Revenues
2001	292,933	22.8%	66,860	73%	48,808	37.4%	18,257
2002	285,469	20.1%	57,312	73%	41,838	37.4%	15,647
2003	292,105	20.0%	58,302	73%	42,561	37.4%	15,919
2004	334,300	19.8%	66,302	73%	48,400	37.4%	18,095
2005	400,781	19.7%	78,975	73%	57,652	37.4%	21,533
2006	476,854	19.6%	93,444	73%	68,214	37.3%	25,447
2007	492,867	19.5%	96,039	73%	70,109	37.3%	26,117
2008*	98,791	19.4%	19,140	73%	13,972	37.2%	5,200
						Total:	**146,214**

‡Ratio of the population in states assigned to Home to the population in states assigned to Reddy and Arctic. (See Appendix B)
†Reddy Ice percentage of sales to supermarkets, mass merchants, gasoline stations, and convenience stores.
*First quarter sales, assumed to be 20% of reported 2008 total revenues.

Table 2
Combined Reddy Ice, Arctic Glacier, and Home City Estimated Revenues
Affected by the Cartel in Indirect Purchaser States Except Kansas and Massachusetts
($ thousands)

Year	Total Revenues‡	Ice Revenues	% Sales to Retailers†	Retailer Revenues	Indirect States % US	Relevant Revenues
2001	628,568	359,793	73%	262,649	37.4%	98,246
2002	612,848	342,781	73%	250,230	37.4%	93,584
2003	627,463	350,407	73%	255,797	37.4%	95,674
2004	718,459	400,601	73%	292,439	37.4%	109,331
2005	863,475	479,756	73%	350,222	37.4%	130,810
2006	1,031,053	570,298	73%	416,318	37.3%	155,305
2007	1,066,571	588,906	73%	429,901	37.3%	160,148
2008	214,047	117,931	73%	86,090	37.2%	32,037
					Total:	**875,135**

‡Combined Total Revenues for each company from Tables 1-A, 1-B, and 1-C
†Reddy Ice percentage of sales to supermarkets, mass merchants, gasoline stations, and convenience stores.
*First quarter sales, assumed to be 20% of reported 2008 total revenues.

The Class estimates that the combined Relevant Sales of the Coconspirators in the 14 Relevant States during the Plea Period were approximately $875,135,000.

Overcharge

The Class is hampered in its ability to estimate the cartel overcharge again because it has received not discovery. Nevertheless, based on academic studies and historical information, a reasonable overcharge would range between 10% and 30%. The United States government uses a 10% overcharge as part of its sentencing guideline to calculate fines and prison time.[26] Prior experience with civil cases that resulted in verdicts supports overcharges of between 20% and 30%. For example, one study noted, "[t]he results of the survey of final verdicts in collusion cases are that the 25 collusion episodes had a median average overcharge of 21.6% and a mean average overcharge of 30.0%."[27] Academic literature is consistent.[28]

Pass-Through Rate

The Class is confident that retailers increased their prices by the entire amount of any price increase that Arctic, Reddy, and Home charged them. The Class likely suffered more harm than the retailers. Counsel's preliminary investigation reveals that retailers increased their prices to consumers in anticipation of price increases and did not lower the retail price even when the price to them decreased.

Estimated Damages – 14 Relevant States

Table 3 sets forth the estimate damages suffered by the Class depending on the overcharge.

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[26] Federal Sentencing Guidelines Manual § 2R1.1, Application Note 3 (2011).
[27] John M. Connor, "Price-Fixing Overcharges: Legal and Economic Evidence," Staff Paper No. 04-17 (revised), Purdue University (Apr. 24, 2005) at 67.
[28] *See generally id.* at 70 ("survey" of 674 observations of average overcharges results in "the primary finding that the median cartel overcharge for all types of cartels over all time periods is 25%.")

Table 3
Estimated Cartel Overcharges Passed Through to Indirect Purchasers and Corresponding Single and Treble Damages at Assumed Overcharge and Pass-Through Rates
($ thousands)

Year	Price Increase	Pass-Thru Rate	Cartel Over-charge	Price Increase	Pass-Thru Rate	Cartel Over-charge	Price Increase	Pass-Thru Rate	Cartel Over-charge
	10%	**100%**		**20%**	**100%**		**30%**	**100%**	
2001	10%	100%	9,825	20%	100%	19,649	30%	100%	29,474
2002	10%	100%	9,358	20%	100%	18,717	30%	100%	28,075
2003	10%	100%	9,567	20%	100%	19,135	30%	100%	28,702
2004	10%	100%	10,933	20%	100%	21,866	30%	100%	32,799
2005	10%	100%	13,081	20%	100%	26,162	30%	100%	39,243
2006	10%	100%	15,530	20%	100%	31,061	30%	100%	46,591
2007	10%	100%	16,015	20%	100%	32,030	30%	100%	48,045
2008	10%	100%	3,204	20%	100%	6,407	30%	100%	9,611
Damages:			**87,513**			**175,027**			**262,540**
Trebled:			**262,540**			**525,081**			**787,621**

Source: Table 2. Includes estimates for 1Q 2008 only.

Based on the foregoing considerations, the Class estimates that the dollar amount of cartel overcharges in the Relevant Period in the 14 Relevant States ranged from $87,513,000 to $262,540,000 before trebling and $262,540,000 to $787,621,000 after trebling, as shown in Table 3.

Estimated "Full Consideration" Damages – Kansas

As Reddy and Arctic admit, Kansas permits recovery of full consideration damages (*i.e.*, what the Class paid for packaged ice).[29] That amount is then trebled.[30]

Arctic and Reddy admitted that their Kansas sales were $27,142,916 and $9,300,000, respectively during the Plea Period.[31] According to Arctic and Reddy, most of these sales were

[29] *See* Tab 6; *Four B Corp. v. Daicel Chem. Indus., Ltd.*, 253 F. Supp. 2d 1147, 1153 (D. Kan. 2003); *Cox v. F. Hoffman-La Roche, Ltd.*, 00 C 1890, 2003 WL 24471996, *2 (Kan. Dist. Ct. Oct. 10, 2003).
[30] *Id.* ("the statutory language allows recovery [by indirect purchasers] for treble the amount of 'full consideration'").
[31] *See* Tab 6.

to retailers such as convenience stores and supermarkets that sell to end-users. These sales figures do not include the substantial retail mark-up paid by the Class. Thus, the sales estimate favors Arctic.

Accordingly, full consideration damages are $36,442,196 before trebling and $109,328,748 after trebling.

Notably, proof of damages on a Kansas full consideration is relatively easy. To prevail on such a claim, a plaintiff need not prove the amount of the overcharge—*i.e.*, the price that he would have paid in the absence of the defendants' antitrust violations. Rather, a plaintiff only has to prove that "there was [an overcharge]," and there was some pass through.[32]

Estimated Statutory Damages – Massachusetts

The Class seeks to recover under Mass. Gen. Laws Ann. ch. 93A, § 9.[33] That statute provides, "recovery shall be in the amount of actual damages or twenty-five dollars. . . ."[34]

The statute does not indicate whether the statutory damages are assessed per bag or consumer transaction. To be conservative, the Class treated each purchase (*i.e.*, transaction) as the basis to trigger statutory damages. The Class also assumed that the average consumer spent $10 on packaged ice per transaction (or 5 bags at $2 each) even though Class' expert's research reveals that average consumer bought $2.52 of packaged ice per transaction (or 1.25 bags at $2 each).

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[32] *Vitamins Antitrust Litig*, No. 98-C-4574, 2006 WL 4058904 at ¶ 6 (Kan. Dist. Ct. Dec. 22, 2006) ("Under Kansas antitrust law, it is not necessary to determine the precise percentage of overcharge, only that there was one.") *Vitamin Antitrust Litig.* 2006 WL 4058904, a case brought by end-users of products whose ingredients were the subject of a price-fixing conspiracy, also held that proof of pass on to end users "is not only a matter of common sense and a matter of economic sense of supply and demand, but also the subject of a number of federal and industry studies that strongly prove that an overcharge . . . is passed on through the chain of distribution to the end user." *Id.* at ¶ 6.

[33] *See, e.g., Ciardi v. F. Hoffmann-La Roche, Ltd.,* 436 Mass. 53, 60, 762 N.E.2d 303, 309 (2002) ("the allegations in the plaintiff's complaint, which in essence state that the defendants engaged in price-fixing of vitamin products at artificially inflated levels to her detriment would, if proven, clearly state a violation of G.L. c. 93A.")

[34] Mass. Gen. Laws Ann. ch. 93A, § 9.

Table 4 shows the Class' estimated number of transactions in Massachusetts derived by the Coconspirators' sales during the Relevant Period and estimated statutory damages at $25 per transaction.

Table 4
Estimated Number of Transactions Involving the Sale of Packaged Ice in Massachusetts and Resulting Indirect Purchaser Damages 2001-2008

Year	Estimated Massachusetts Relevant Sales	Estimated Average Price*	Estimated Number of Bags	Assumed Bags per Transaction	Estimated Transactions	Indirect Purchaser Damages
2001	$2,224,168	$0.90	2,471,008	5	494,202	$12,355,040
2002	$2,108,089	$0.95	2,214,717	5	442,943	$11,073,583
2003	$2,140,118	$0.98	2,186,828	5	437,366	$10,934,142
2004	$2,422,598	$1.03	2,358,547	5	471,709	$11,792,736
2005	$2,872,937	$1.05	2,734,136	5	546,827	$13,670,682
2006	$3,385,247	$1.14	2,980,438	5	596,088	$14,902,188
2007	$3,473,740	$1.24	2,809,696	5	561,939	$14,048,480
2008*	$693,293	$1.18	586,401	5	117,280	$2,932,003
Total	**$19,320,190**		**18,341,771**		**3,668,354**	**$91,708,854**

*Estimated average sales price based on information in Tab 6.
*Values for 2008 are for the first quarter of 2008.

As set forth in Table 4, total Massachusetts statutory damages are $91,708,854.

As with Kansas, the Class only has to establish that prices were artificially inflated and absorbed to some extent. Certification of such a class is appropriate even though it leads to substantial aggregate damages to the Class.[35]

[35] *See, e.g., Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1443 (2010) (Rule 23 permits class actions even though it "transform[s] [the] dispute over a five *hundred* dollar penalty into a dispute over a five *million* dollar penalty"); *Murray v. GMAC Mortg. Corp.*, 434 F.3d at 953 (holding certification of a class is appropriate where statutory damages create "a potential liability in the billions of dollars for purely technical violations" and the named plaintiff suffered trivial damages").

Total Damages

Based on the foregoing, the Class is entitled to recover **at least** $463,577,602.

Overcharge Damages (Trebled):	$262,540,000
Kansas Full Consideration Damages (Trebled):	$109,328,748
Massachusetts Statutory Damages:	$ 91,708,854
Total:	$463,577,602

APPENDIX A

(LEGAL AUTHORITY FOR CLAIMS)

Arizona	ARIZ. REV. STAT. ANN. § 44-1402	*See, e.g., Bunker's Glass Co. v. Pilkington PLC*, 206 Ariz. 9, 17 (Ariz. 2003) ("The Arizona statute broadly grants a right of action to any "person" injured in business or property by the anti-competitive acts of another . . . The [indirect purchaser] Plaintiffs certainly fall within the definition of persons.").
California	CAL. BUS. AND PROF. CODE §§ 16722, 16726	The MDL Court held that Named Claimants had claims under the California antitrust laws. *In re Packaged Ice Antitrust Litigation*, 779 F. Supp.2d 642, 662 (E.D.Mich. 2011).
Iowa	IOWA CODE ANN. § 553.4	*Comes v. Microsoft Corp.*, 646 N.W.2d 440, 444 (Iowa 2002) (the statute "creates a cause of action for *all* consumers, regardless of one's technical status as a direct or indirect purchaser").
Kansas	KAN. STAT. ANN. § 50-112	*See, e.g., Four B Corp. v. Daicel Chem. Indus., Ltd.*, 253 F. Supp. 2d 1147, 1153 (D. Kan. 2003)
Maine	ME. REV. STAT. ANN., tit. 10, § 1101	*See, e.g., In re Relafen Antitrust Litigation*, 221 F.R.D. 260, 278 (D. Mass. 2004) ("[Maine] permits indirect purchaser actions under its antitrust [statutes].").
Massachusetts	MASS. GEN. LAWS ANN. ch. 93A, § 2	*See, e.g., Ciardi v. F. Hoffmann-La Roche, Ltd.*, 436 Mass. 53, 58 (Mass. 2002).
Michigan	MICH. COMP. LAWS ANN. § 445.772	The MDL Court found that Named Claimants were permitted to bring claims against Defendants under the Michigan antitrust laws. *In re Packaged Ice Antitrust Litigation*, 779 F.Supp.2d 642, 663 (E.D.Mich. 2011).
Minnesota	MINN. STAT. ANN. § 325D.51	*See, e.g., Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624–25 (Minn. 2007).
Mississippi	MISS. CODE ANN. § 75-21-1	*See, e.g, In re TFT-LCD (Flat Panel) Antitrust Litig.*, 599 F. Supp.2d 1179, 1188 (N.D.Cal 2009).
Nebraska	NEB. REV. STAT. §§ 59-801, 59-1603	*See, e.g., Arthur v. Microsoft Corp.*, 267 Neb. 586 (Neb. 2004) ("the statutes contemplate[] an action by indirect purchasers").
Nevada	NEV. REV. STAT. ANN. § 598A.060	*See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litigation* 599 F. Supp.2d 1179, 1188 (N.D. Cal. 2009).

New Mexico	N.M. STAT. ANN. § 57-1-1	*See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litigation*, 738 F.Supp.2d 1011, 1023–24 (N.D.Cal. 2010) (recognizing that New Mexico's repealer statute "expressly allow[s] indirect purchasers to recover money damages for antitrust violations").
New York	N.Y. GEN. BUS LAW § 340	The MDL Court found that Named Claimants were permitted to bring claims against Defendants under the New York antitrust laws as indirect purchasers. *In re Packaged Ice Antitrust Litigation*, 779 F. Supp.2d 642, 663 (E.D.Mich. 2011).
North Carolina	N.C. GEN. STAT. ANN. § 75-1	*See, e.g., In re Flonase Antitrust Litigation*, 692 F.Supp.2d 524, 545–46 (E.D.Penn. 2010).
Tennessee	TENN. CODE ANN. § 47-25-102	*See, e.g., Blake v. Abbott Laboratories, Inc.*, No. 03A01-9509-CV-00307, 1996 WL 134947, *3–4 (Tenn. Ct. App. Mar. 27 1996) (holding recovery permitted regardless of "whether the individual is a direct purchaser or indirect purchaser").
Wisconsin	WIS. STAT. ANN. § 133.03	*See, e.g., Meyers v. Bayer AG. Bayer Corp.*, 303 Wis.2d 295, 312 (Wis. 2007).

APPENDIX B

(ASSUMPTIONS UNDERLYING RELEVANT SALES ESTIMATES)

To arrive at a damages estimate, the Class first estimated sales of packaged ice by Arctic, HCI and Reddy in the Relevant States. The estimates rely on the following assumption (which the Class believes favor Arctic).

Arctic and Reddy

- The Class used data showing total sales publicly reported by Arctic and Reddy.
- The Class adjusted Reddy's total sales to reflect the fact that it also sells non-ice products. In its public filings, Reddy reported that approximately 10% of its annual total sales in the Relevant Period represented sales of non-ice products, so the Class assumes that Reddy's sales of Relevant Sales of ice products are 90% of its total sales in each year of the Relevant Period.
- The Class adjusted Arctic's total sales to reflect the fact that the company makes sales in Canada as well as the United States. In certain reports to unitholders, Arctic reported that about 80% of its sales are in the United States, but provided no further details. The Class therefore treated 80% of Arctic's total sales as its United States sales.
- The Class then adjusted the combined sales of the three defendants to reflect sales in the 14 Relevant States (i.e., without Kansas and Massachusetts). To do this, the Class assumes that per-capita sales are the same in each of the contiguous 48 states, in which case the combined sales of the companies would be distributed among the states in the same proportion as their shares of the population. Based on data from the U.S. Bureau of the Census, the average population of the

Relevant States (excluding Kansas and Massachusetts) over the Relevant Period was slightly more than 37% of the total in each year. (See Table 5-A and 5-B.)

- The Class then adjusted the combined Relevant Sales by a further 27% to account for sales to end-users other than retailers (e.g., special events, restaurants, and industrial users and to non-chain retailers (e.g., individual gas stations and groceries). This adjustment is based on Reddy public statements and is likely high. HCI has stated that its sales to end-users are about 10%.

Home

Home is privately held and does not have publicly available information about its sales. The Class estimated Home's sales using the assumption that total ice sales to retail outlets was distributed among the 48 contiguous states in the same proportion as the population in each state. That is, the Class assumed that, if a state has five percent of total U.S. population, five percent of the Defendants' combined sales would be sold to retail distributors in that state. The Class then assigned particular states to each company according to the locations of their plants and distribution facilities. During the plea period, the Defendants tended not to have overlapping territories. Indeed, the Class contends that this was one manifestation of the illegal agreement among the firms to refrain from competing for the others' customers. With a few exceptions, the population of each state could be "assigned" to each supplier. In states where the Class believed that Home and another Coconspirator were both significant suppliers, the population was allocated equally between them.

Using this approach, the Class calculated a "Home City Sales Allocation Ratio" for each year equal to the ratio of the population of states assigned to Home divided by those assigned to Reddy and Arctic. This ratio is equal to the share of population in states assigned to Home

divided by the combined shares assigned to Reddy and Arctic. Over the Relevant Period, the states assigned to Reddy and Arctic had on average 83.5% of the population of the 48 contiguous states, with Home supplying the remaining 16.5%%. Assuming that retail ice sales are distributed the same as population, therefore, the Sales Adjustment Ratio for the entire Relevant Period would be equal to 16.5% divided by 83.5%, or 19.8%. Thus, in the absence of the actual data, the Class assumes that Home's packaged ice sales were 19.8% of the combined sales of Reddy and Arctic over the Relevant Period.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: PACKAGED ICE ANTITRUST LITIGATION	Civil Action No.: 2:08-MD-1952-PDB
THIS DOCUMENT RELATES TO: ALL INDIRECT PURCHASER ACTIONS	CONSOLIDATED CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

Plaintiffs bring this action for damages, injunctive relief and costs of suit including reasonable attorneys' fees for injuries to themselves and members of the proposed class they represent. The allegations set forth below are based upon information and belief pursuant to the investigation of counsel, except as to those allegations regarding each plaintiff.

NATURE OF THE ACTION

1. This action arises from a long-standing agreement among defendants — producers of packaged ice in the United States and Canada, which have a combined United States market share of nearly 70 percent — not to compete with each other. In furtherance of their cartel, defendants agreed to, and did in fact, fix and inflate prices, allocate territories and customers, acquire competitors, refuse to compete and otherwise commit a variety of unlawful and anticompetitive acts. The purpose and effect of the cartel has been to fix, raise, maintain and stabilize the prices paid for ice sold in plastic bags or large blocks ("packaged ice") throughout the United States. Evidence of the existence of the conspiracy includes, but is not limited to, admissions made by participants in the conspiracy, guilty pleas by two of the defendants to a violation of Section 1 of the Sherman Act, defendants' suspension of officers who they believe may have participated in the cartel, defendants' attempts to intimidate and bribe a whistleblower

and economic behavior that would have been inconsistent with each defendant's self-interest or implausible in the absence of the conspiracy.

JURISDICTION AND VENUE

2. Plaintiffs' claims arise under § 1 of the Sherman Act (15 U.S.C. § 1) and the statutes of 14 states. This Court has exclusive original jurisdiction over the federal claim pursuant to § 16 of the Clayton Act (15 U.S.C. § 26) as well original jurisdiction pursuant to 28 U.S.C. § 1331. This Court also has jurisdiction over this entire action pursuant to 28 U.S.C. § 1332(d) because one plaintiff and one defendant are citizens of different states and the amount-in-controversy sought on behalf of the class exceeds $5 million exclusive of interest and costs. In addition, this Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367 because they arise out of a common nucleus of operative facts of the federal claim asserted in this action.

3. Venue is proper in the Eastern District of Michigan pursuant to § 12 of the Sherman Act (15 U.S.C. § 22) and 28 U.S.C. § 1391 because defendants transact business, may be found, and a substantial part of the events and occurrences giving rise to the claims took place, in this District.

INTERSTATE TRADE AND COMMERCE

4. During the class period, defendants produced, manufactured, distributed and sold packaged ice in interstate commerce in a continuous and uninterrupted flow to customers located in each and every state in the continental United States and District of Columbia.

5. Defendants' activities at issue in this action were within the flow of and substantially affected interstate trade and commerce, including commerce in each and every state in the continental United States and District of Columbia.

PLAINTIFFS

6. Plaintiff Lawrence J. Acker is a citizen of the State of Michigan. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at one or more retail establishments in Michigan.

7. Plaintiff Patrick Simasko is a citizen of the State of Michigan. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at one or more retail establishments in Michigan.

8. Plaintiff Wayne Stanford is citizen of the State of Michigan. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at retail establishments in Michigan and Wisconsin.

9. Plaintiff Brian W. Buttars is a citizen of the State of New York. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier and Reddy Ice, for his own use and not for resale, at retail establishments in Florida, Maine and New York.

10. Plaintiff James Feeney is a citizen of the State of California. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at retail establishments in California, Maine and Nevada.

11. Plaintiff Ainello Mancusi is a permanent resident alien. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at one or more retail establishments in New York.

12. Plaintiff Ron Miastkowski is a citizen of the State of Florida. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Reddy Ice, for his own use and not for resale, at one or more retail establishments in Florida.

13. Plaintiff Brandi Palombella is a citizen of the Commonwealth of Massachusetts. Between January 1, 2001 and March 6, 2008, she purchased packaged ice indirectly from Arctic Glacier and Reddy Ice, for her own use and not for resale, at retail establishments in New York and Tennessee.

14. Plaintiff Lehoma Goode is a citizen of the State of North Carolina. Between January 1, 2001 and March 6, 2008, she purchased packaged ice indirectly from Reddy Ice, for her own use and not for resale, at one or more retail establishments in North Carolina.

15. Plaintiff Beverly Herron is a citizen of the State of Minnesota. Between January 1, 2001 and March 6, 2008, she purchased packaged ice indirectly from Arctic Glacier, for her own use and not for resale, at one or more retail establishments in Minnesota.

16. Plaintiff Robert DeLoss is a citizen of the State of Iowa. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at one or more retail establishments in Iowa.

17. Plaintiff Karen Prentice is a citizen of the State of Arizona. Between January 1, 2001 and March 6, 2008, she purchased packaged ice indirectly from Reddy Ice, for her own use and not for resale, at one or more retail establishments in Arizona.

18. Plaintiff Ian Groves is a citizen of the State of New Mexico. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Reddy Ice, for his own use and not for resale, at one or more retail establishments in New Mexico.

19. Plaintiff Lynn Strauss is a citizen of the State of New Mexico. Between January 1, 2001 and March 6, 2008, she purchased packaged ice indirectly from Arctic Glacier, for her own use and not for resale, at one or more retail establishments in New Mexico.

20. Plaintiff Nathan Croom is a citizen of the State of Nebraska. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at one or more retail establishments in Nebraska.

21. Plaintiff Joe Sweeney is a citizen of the Commonwealth of Massachusetts. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Arctic Glacier, for his own use and not for resale, at one or more retail establishments in Massachusetts.

22. Plaintiff John Spellmeyer is a citizen of the State of Kansas. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Reddy Ice, for his own use and not for resale, at one or more retail establishments in Kansas.

23. Plaintiff Samuel Winnig is a citizen of the State of Tennessee. Between January 1, 2001 and March 6, 2008, he purchased packaged ice indirectly from Reddy Ice, for his own use and not for resale, at one or more retail establishments in Mississippi.

DEFENDANTS

24. Defendant Reddy Ice Holdings, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 8750 North Central Expressway, Suite 1800, Dallas, Texas 75231. Reddy Ice Holdings, Inc. is the parent of its wholly-owned subsidiary, defendant Reddy Ice Corporation. Reddy Ice Corporation is a Delaware corporation with its principal place of business at 8750 North Central Expressway, Suite 1800, Dallas, Texas 75231. Hereafter Reddy Ice Holdings Inc. and Reddy Ice Corporation will be referred to collectively as "Reddy Ice." Reddy Ice is the largest manufacturer and distributor of packaged ice in the United States. Reddy Ice's products are primarily sold throughout the southern United States. Within its territories, Reddy Ice is, and has been, the leading manufacturer and distributor of packaged ice. Reddy Ice has had over 80% of its packaged ice sales in territories

where it is the leading manufacturer. Reddy Ice also uses other packaged ice producers as agents to serve its customers under its customer contracts referring to them at times as "co-packers" or "franchisees."

25. The "Arctic Glacier" defendants are related companies consisting of: Defendant Arctic Glacier Income Fund ("Arctic Fund"), a mutual fund trust organized under the laws of Alberta, Canada, with its principal place of business at 625 Henry Avenue, Winnipeg, Manitoba, Canada; defendant Arctic Glacier Inc., a wholly-owned subsidiary of Arctic Fund, organized under the laws of Alberta, Canada, with its principal place of business at 625 Henry Avenue, Winnipeg, Manitoba, Canada; and defendant Arctic Glacier International Inc., a wholly-owned subsidiary of Arctic Glacier Inc., which is a Delaware corporation with its principal place of business located at 1654 Marthaler Lane, West St. Paul, Minnesota. Artic Glacier is in the business of manufacturing and distributing packaged ice in the United States, primarily in parts of the midwest, northeast, and California. Arctic Glacier is the second largest manufacturer of packaged ice sold in the United States. Arctic Glacier is, and has been, the leading manufacturer and distributor of packaged ice in the territories in which it operates. Arctic Glacier also sells packaged ice through its many wholly-owned subsidiaries and uses other packaged ice producers as agents to serve its customers under its customer contracts referring to them at times as "co-packers," "franchisees" or "licensees."

26. Defendant Home City Ice Company ("Home City") is an Ohio corporation with its principal place of business at 6045 Bridgetown Road, Cincinnati, Ohio 45248. Home City manufactures, distributes, and sells packaged ice principally in parts of the midwest. Home City is the third largest manufacturer and distributor of packaged ice in the United States with sales that have grown to more than $80 million per year. Home City also uses other packaged ice

producers as agents to serve its customers under its customer contracts referring to them at times as "co-packers" or "franchisees."

AGENTS

27. The acts alleged to have been done by the defendants were performed by their respective officers, directors, agents, employees or representatives while actively engaged in the management, direction, control or transaction of the defendants' business affairs.

CLASS ALLEGATIONS

28. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated. The "class" is defined as:

> All persons or other legal entities (excluding governmental entities, defendants, their officers, directors, subsidiaries or affiliates), who purchased packaged ice indirectly in the continental United States (except Ohio) and District of Columbia between January 1, 2001 until such time as the effect of the conspiracy ceases.

29. The members of the class are so numerous that joinder of all of them would be impracticable. The exact number of class members is unknown by plaintiffs at this time, but plaintiffs believe them to number in the millions.

30. Plaintiffs' claims are typical of the class members. Plaintiffs and all class members were impacted and damaged in the same manner by defendants' wrongful conduct. Plaintiffs and the class members purchased packaged ice at artificially inflated prices because of defendants' wrongful conduct.

31. Plaintiffs will fairly and adequately protect the interest of the class. Plaintiffs' interests are coincident with, and not antagonistic to, those of the class. Plaintiffs also have retained counsel, who have experience in the litigation of complex antitrust class actions including of the type of claims alleged herein.

32. Questions of law and fact common to the class members predominate over

questions that may affect only individual class members. Defendants have acted on grounds generally applicable to the entire class. Common questions of law and fact include, but are not limited to:

(a) Whether defendants engaged in a contract, combination or conspiracy to allocate the market and customers for packaged ice in the United States, and to raise, fix, maintain or stabilize the price of packaged ice sold in the United States;

(b) The duration and extent of the contract, combination or conspiracy alleged herein;

(c) Whether the alleged contract, combination or conspiracy violated Section 1 of the Sherman Act;

(d) Whether defendants violated the state statutes alleged herein;

(e) Whether defendants took steps to conceal the contract, combination or conspiracy;

(f) Whether defendants' conduct caused the price of packaged ice to be artificially high and non-competitive in the states in which they bought it;

(g) Whether plaintiffs and members of the class were injured by defendants' conduct; and

(h) Whether plaintiffs and the class are entitled to equitable and injunctive relief and the nature of such relief.

33. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all class members is impractical. The damages suffered by the individual class members are small, particularly given the expense and burden of individual prosecution of the claims asserted in this litigation. Thus, absent the

availability of class action procedures, it would not be feasible for class members to redress the wrongs done to them. Even if the class members could afford individual litigation, the court system could not. Further, individual litigation presents the potential for inconsistent or contradictory judgments and would greatly magnify the delay and expense to all parties and the court system. Therefore, the class action device presents far fewer case management difficulties and will provide the benefits of unitary adjudication, economy of scale, and comprehensive supervision in a single court.

STRUCTURAL CHARACTERISTICS OF THE INDUSTRY

34. Packaged ice is sold at retail establishments such as supermarkets, mass merchants and convenience stores. Suitable for human consumption, it is used to keep food and beverages at sufficiently cold or comfortable temperatures particularly when refrigeration is not available.

35. Packaged ice is sold throughout the United States. Excluding in-house manufacturing, the packaged ice industry in the United States has been estimated as having sales of about $900 million in 2006. The retail ice distribution market accounts for an estimated 90% of packaged ice sales.

36. Defendants dominate the packaged ice industry, and the market share and financial resources of non-defendant firms that manufacture and distribute packaged ice is small. Through acquisitions, defendants have increased their market power and reduced the ability of other packaged ice companies to compete for customers served by defendants. According to Reddy Ice's estimation, by early 2007 Reddy Ice, Arctic Glacier and Home City controlled 66.6% of the packaged ice industry. By this time, there remained only small third party ice manufacturers, the majority of whom had less than $1 million a year in revenue.

37. Turnover of major ice customers is infrequent. Each defendant typically is the sole source supplier of packaged ice to its customers. There is usually one packaged ice option per retail location. Accordingly, each defendant does not experience any competition for its packaged ice within stores.

38. Defendants' pricing is not constrained by threat of entry into the manufacture and sale of packaged ice. There are substantial barriers to entry to be able to compete effectively with the defendants. In order to serve major customers, a new entrant into the business would have to incur multimillion-dollar costs, including a manufacturing plant and equipment, energy, transportation, and distribution infrastructure. Because of these high costs, new or small distributors are not able to meet the needs of large customers with geographically dispersed retail locations and cannot compete successfully for such customers.

39. Consumers of packaged ice do not have any alternative products that they find reasonably interchangeable with packaged ice. They will not substitute packaged ice for another product in response to a small price increase.

40. Demand for packaged ice is inelastic and stable. Because of its low cost, consumers are not sensitive to price, as they will not reduce the quantity of packaged ice that they demand in response to a small increase in price. Although such a price increase would amount to pennies for the retail price of packaged ice, it would reap substantial additional profits to defendants. Thus, an increase in price will not produce a sufficient reduction in the quantity of packaged ice sold so as to render a price increase unprofitable.

41. Packaged ice is a fungible commodity product as it is simply frozen water. As a result, direct customers have no need to stock any particular brand of packaged ice.

42. Packaged ice manufacturers are able to monitor the sales activity of each other, including the territories in which they sell and the approximate prices charged.

43. Direct customers of packaged ice, particularly retailers such as supermarkets, mass merchants and convenience stores, are in a fiercely competitive industry. They operate on slim margins. They have the ability to change prices charged to their customers frequently and cheaply. They cannot afford to absorb price increases and remain profitable. As a result, they typically pass on entire price increases to their customers such as plaintiffs and the class rapidly after they receive them from the manufacturers.

THE CRIMINAL ANTITRUST INVESTIGATION

A. Home City's Conviction

44. On June 7, 2008, Thomas E. Sedler, President and Chief Executive Officer of Home City, on behalf of Home City, pleaded guilty to violating Section 1 of the Sherman Act. Before the Honorable Herman J. Weber, United States District Judge of the United States District Court for the Southern District of Ohio (Western Division) and on behalf of Home City, Sedler swore that the averments in Home City's plea agreement were true. Sedler confirmed under oath that "since 2001, [defendant] participated in a conspiracy among packaged ice producers, the primary purpose of which was to allocate customers and territories of packaged ice sold in southeastern Michigan and the Detroit, Michigan metropolitan area. In furtherance of the conspiratorial activity, the defendant, through its officers and employees, primarily through its deceased vice president of sales and marketing, engaged in discussions and attended meetings with representatives of other packaged ice producers. During these discussions and meetings, agreements were reached to allocate customers and territories of packaged ice to be sold in

southeastern Michigan and the Detroit, Michigan metropolitan area." The Court then conditionally accepted Home City's guilty plea pursuant to the plea agreement.

45. On March 2, 2010, the Court accepted Home City's guilty plea and imposed sentence. The judgment of conviction and commitment order was entered on March 3, 2010.

B. Search Warrant Executed at Reddy Ice's Headquarters, Its Suspension of Key Officer and State Attorneys General Investigations.

46. On or about March 4, 2008, a United States Magistrate Judge of the United States District Court for the Northern District of Texas issued a warrant authorizing the Federal Bureau of Investigation to search Reddy Ice's headquarters in Dallas, Texas. Before issuing the search warrant, the magistrate judge determined — based upon a sworn government application — there was probable cause to believe evidence of criminal activity would be found at Reddy Ice's corporate headquarters. The magistrate judge made this finding even though Reddy Ice does no business in Michigan.

47. On September 15, 2008, Reddy Ice announced that it had suspended Ben D. Key, the Company's Executive Vice President – Sales & Marketing, because the Special Committee of the Company's Board had "found that Mr. Key has likely violated Company policies and is associated with matters that are under investigation." Key had originally been an executive with Reddy Ice, and was on Reddy Ice's Executive Committee. To replace Key, Reddy Ice assigned a team of senior executives to direct its sales and marketing efforts. Key later resigned voluntarily.

48. Reddy Ice has disclosed that it is the subject of investigations by numerous state attorneys general relating to pricing fixing or a customer market allocation.

C. Arctic Glacier's Conviction, Its Officers' Convictions and State Attorneys General Investigations

49. Arctic Glacier International Inc. and Keith Corbin, Frank Larson and Gary Cooley, three former executives of Arctic Glacier Inc., pleaded guilty to violating § 1 of the Sherman Act. Although Corbin, Larson, and Cooley swore in their allocutions that they were employed by Arctic Glacier International Inc. when they committed their crimes, they have since admitted that they were employed by Arctic Glacier Inc. at that time.

50. On November 10, 2009, Hugh A. Adams, Secretary and General Counsel of Arctic Glacier, Inc., pleaded guilty, on behalf of Arctic Glacier International Inc., to violating § 1 of the Sherman Act. Before the Honorable Herman J. Weber, United States District Judge of the United States District Court for the Southern District of Ohio (Western Division) and on behalf of Arctic Glacier, Adams swore that the averments in Arctic Glacier International Inc.'s plea agreement were true. Adams confirmed under oath that "[b]eginning January 1st, 2001, and continuing until at least July 17th, 2007, the exact dates being unknown to the United States, the defendant and co-conspirators entered into and engaged in a conspiracy to suppress and eliminate competition by allocating packaged-ice customers in southeastern Michigan and the Detroit, Michigan, metropolitan area."

51. On February 11, 2010, the Court accepted Arctic Glacier International Inc.'s guilty plea and imposed sentence. The judgment of conviction and commitment order was entered on March 3, 2010.

52. On October 13, 2009, Keith Corbin pleaded guilty to violating § 1 of the Sherman Act. Before the Honorable Herman J. Weber, United States District Judge of the United States District Court for the Southern District of Ohio (Western Division), Corbin swore that the

averments in his plea agreement were true. Corbin confirmed under oath that beginning as early as March 1, 2005 and continuing until at least July 17, 2007, "he participated in a conspiracy to allocate customers of packaged ice sold in southeastern Michigan and the Detroit metropolitan area."

53. On February 2, 2010, the Court accepted Corbin's guilty plea and imposed sentence. On February 3, 2010, the Court entered the judgment of conviction and commitment order.

54. On October 13, 2009, Gary Cooley pleaded guilty to violating § 1 of the Sherman Act. Before the Honorable Herman J. Weber, United States District Judge of the United States District Court for the Southern District of Ohio (Western Division), Cooley swore that the averments in his plea agreement were true. Cooley confirmed under oath that "[b]eginning at least as early as June 1st, 2006, and continuing until at least July 17th, 2007, . . ., the defendant and co-conspirators entered into and engaged in a conspiracy to suppress and eliminate competition by allocating packaged-ice customers in southeastern Michigan and the Detroit, Michigan, metropolitan area."

55. On February 4, 2010, the Court accepted Cooley's guilty plea, imposed sentence and entered the judgment of conviction and commitment order.

56. On October 13, 2009, Frank Larson pleaded guilty to violating § 1 of the Sherman Act. Before the Honorable Herman J. Weber, United States District Judge of the United States District Court for the Southern District of Ohio (Western Division), Larson swore that the averments in his plea agreement were true. Larson confirmed under oath that "[b]eginning at least as early as March 1st, 2005, and continuing until at least July 17th, 2007, ... the defendant and co-conspirators entered into and engaged in a conspiracy to suppress and eliminate

competition by allocating packaged-ice customers in southeastern Michigan and the Detroit, Michigan metropolitan area."

57. On February 3, 2010, the Court accepted Larson's guilty plea, imposed sentence and entered the judgment of conviction and commitment order.

58. Arctic Glacier has disclosed that it is the subject of investigations by numerous state attorneys general relating to pricing fixing or a customer market allocation.

DEFENDANTS' EFFORTS TO SILENCE THE WHISTLEBLOWER

59. In August 2008, Martin G. McNulty filed an action against his former employer, Arctic Glacier, claiming he was fired because he had refused to participate in a packaged ice industry antitrust conspiracy. McNulty, who had been Vice President of Sales at Party Time Ice, which was acquired by Arctic Glacier in late 2004, has sworn, subject to penalties of perjury (*see United States v. Arctic Glacier Int'l Inc.*, 09-cr-0147 (S.D. Oh.) (Dkt. #38 at 1-3)):

a. "Arctic Glacier executive Keith Corbin told me that Arctic Glacier's conspiracy with Reddy Ice extended throughout the United States. For instance, according to Mr. Corbin, Arctic Glacier had 'backed away' from buying an ice company in Nevada so that Arctic Glacier and Reddy Ice would not be in direct competition. Mr. Corbin explained to me that Arctic Glacier's agreement not to enter the South and Southwest (a geography dominated by Reddy Ice) enabled Reddy Ice to 'get their prices up,' and Reddy Ice's agreement to stay out of the Midwest and Canada enabled Arctic Glacier to do the same. Mr. Corbin described Reddy Ice as 'good competition.'"

b. "In January 2005, I traveled with Keith Corbin to Ohio to meet with one of my accounts, Speedway SuperAmerica LLC. Speedway was headquartered in Ohio and had stores in a number of different states, including Michigan. Prior to meeting with Speedway, Mr. Corbin instructed me as to the geographic locations of the Speedway stores that Arctic Glacier could service, and the locations that Arctic Glacier could not service – including locations in Ohio – because of Arctic Glacier's market allocation agreement with Home City."

c. "Charles Knowlton, the owner of Party Time Ice (which was acquired by Arctic Glacier) threatened that, because of the conspiracy between Arctic

Glacier and Home City Ice, Mr. Knowlton would ensure that Home City Ice would not hire me if I did not participate in the market allocation conspiracy."

d. "Keith Corbin informed me that Arctic Glacier had the same conspiratorial relationship with Home City as Party Time. Mr. Corbin informed me that if I refused to participate in the conspiracy and left Arctic Glacier, he would ensure that I would not be hired by competing ice manufacturers, including Home City."

e. "After I was terminated by Arctic Glacier for refusing to participate in the unlawful market allocation conspiracy, I unsuccessfully applied for employment with Home City in Ohio. I was told by Geoff Lewandowski that he had spoken to Charles Knowlton, who was then working for Arctic Glacier, and that Mr. Knowlton had told Mr. Lewandowski that I would not be able to get a job with another packaged ice company if I continued cooperating with federal authorities in their investigation."

f. "After being terminated, I also spoke to Joseph Riley of Tropic Ice. He informed me that he spoke to Jim Forsberg of Arctic Glacier, who told Mr. Riley that I was being boycotted from employment in the packaged ice industry by Arctic Glacier."

60. McNulty also alleges in the lawsuit that Steve Knowlton called McNulty on behalf of his father Charles Knowlton (owner of Party Ice who later became Director of Franchise Operations for Arctic Glacier) and told him that a Home City executive had told Steve Knowlton that a current Party Time customer in Michigan had approached Home City about supplying it. Home City declined, and told Party Time to take steps so that the customer would not look for another ice supplier. Steve Knowlton told McNulty that Party Time and Home City had agreed not to compete for customers in certain areas. Party Time would not service certain stores because they were being serviced by Home City, and Home City and Party Time agreed in advance on who would submit the lower bid to potential customers, including providing false certifications that the bid was not collusive. (*McNulty v. Reddy Ice Holdings, Inc.*, 08-cv-13178 (E.D. Mich.) ("*McNulty*") (Dkt. #43 at 10-11).

61. In *McNulty*, McNulty also alleged, "on March 28, 2005, Mr. McNulty received a

phone call from a colleague of Mr. Knowlton [an Arctic Glacier officer] ..., who was calling at the behest of Mr. Knowlton. [The colleague] wanted to set up a meeting between himself, Mr. McNulty, and Mr. Knowlton to address terms upon which Arctic Glacier might rehire Mr. McNulty at a salary that 'would make him happy.' [The colleague] stated that Arctic Glacier was willing to pay him an annual salary of more than twice his previous salary. The offer was conditioned on Mr. McNulty's participation in the conspiracy and his not cooperating with the government. Mr. McNulty refused the offer." (*Id.* at 14).

ADMISSIONS BY THE CO-CONSPIRATORS

62. In a motion made in these proceedings (Dkt. #332 at 10-11), the Direct Purchaser Plaintiffs offer information about 11 secretly recorded telephone conversation between Ted Sedler of Home City and representatives of Arctic Glacier and Reddy Ice. In particular, the motion provides the following details of these recordings:

a. "A recording on 9/25/07 between Keith Corbin of Arctic Glacier and Ted Sedler of Home City in which, inter alia, they discussed settling issues with Ben Key of Reddy Ice and discussed dividing territories with Reddy Ice in Texas, Kansas or Oklahoma.

b. A recording on 8/17/07 in which Greg Cooley of Arctic Glacier said that Arctic Glacier and Reddy Ice have worked together and co-existed in Texas.

c. A recording on 11/17/07 in which Greg Snyder of Arctic Glacier explained that he and Ben Key had traded customers in Kansas and that Arctic Glacier and Reddy had allocated territories after acquisition of Shepards.

d. A recording of 11/5/07 between Greg Geiser of Home City and Ray Torteriesse in which they confirmed prior meetings with Lou McGuire; indicated that Bob Nagy of Arctic Glacier had pricing conversations with Kerry Chamberlin of Happy Ice; stated that Happy Ice had been causing problems; and that Arctic worked with Holiday Ice to broker peace.

e. A recording on 11/5/07 between Ben Key of Reddy Ice and Ted Sedler of Home City regarding Roanoke, VA.

f. A recording on 12/11/07 between Ted Sedler of Home City and Gary Cooley of Arctic Glacier regarding Lubbock, TX, Carlisle, PA, and Phoenix.

g. Three recordings, on 2/20/08, 2/22/08 and 2/26/08 respectively, between Ted Sedler of Home City and Ben Key of Reddy Ice regarding Tennessee and Kentucky.

h. A recording on 8/24/07 in which Gary Cooley of Arctic Glacier confirmed past practices with Home City's Lou McGuire.

i. A recording on 8/24/07 in which Frank Larson confirms that Arctic Glacier wants to continue working with Home City."

63. In an action entitled *Chamberlain v. Reddy Ice Holdings, Inc.*, 08-cv-13451, pending in this Court, plaintiff alleged (Dkt. #37 at 17-19):

a. "Confidential Witness Number 2 ("CW2") is a former Reddy Ice employee that held several different positions at Reddy Ice during the Class Period and specifically from January 2006 through March 2008, including: (i) Internal Auditor, (ii) Area Controller, and (iii) Utilities Specialist. Through these positions at Reddy Ice, CW2 was privy to highly-sensitive financial information related to the Company's financial performance and business practices, such as compiling the financials for all of the manufacturing plants in CW2's assigned territory, including revenues, expenses and EBITDA, and comparing budgeted amounts to actual amounts. CW2 was based out of the Company's Dallas headquarters, and travelled regularly to numerous plants owned by the Company to conduct internal audits."

b. "During the execution of CW2's duties, CW2 learned of an unlawful agreement between Reddy Ice and Arctic Glacier to allocate territories and markets for packaged ice for exclusive distribution and sales of packaged ice. CW2 stated that this collusive agreement was often discussed in CW2's presence among Reddy Ice employees at the corporate office and at the various plants that CW2 visited while conducting audits. In addition, CW2 was personally told of the unlawful agreement by [former Reddy Ice Chief Executive Office] Weaver."

c. "According to CW2, [former Reddy Ice Chief Executive Officer] Brick had a connection at Arctic Glacier and had used this connection to approach the CEO of Arctic Glacier. As told to CW2 by other Reddy Ice employees with whom CW2 came into contact during the course of internal audits, defendant Brick entered into the on-going unlawful

agreement with Arctic Glacier to allocate territories and markets for packaged ice whereby Reddy Ice agreed to stay out of California and Arctic Glacier agreed to stay out of Arizona. CW2 understood, based upon conversations with other Reddy Ice employees, that the unlawful agreement was entered into prior to the start of CW2's employment at Reddy Ice and at around the same time that Reddy Ice sold most of its California ice plants and Arctic Glacier shut down its Arizona plants."

d. "With respect to the structure of the unlawful allocation agreement, several Reddy Ice employees explained to CW2 that Reddy Ice agreed to sell its California manufacturing operations (except for a facility in Brawley, California that was near the border of Arizona) to a consortium of companies located in California. It was further explained to CW2 that, at the time of the Agreement, Arctic Glacier did not externally appear to have a connection with the consortium of companies, but it was understood that Arctic Glacier would subsequently acquire this consortium of companies to have access to all of the packaged ice manufacturing facilities that had been acquired from Reddy Ice."

e. "During CW2's employment at Reddy Ice, CW2 attended an annual plant managers' meeting held at a Dallas hotel during February 2006 or 2007. CW2 stated that during this annual meeting, defendant Weaver mentioned the unlawful agreement with Arctic Glacier in a presentation to CW2 and several other management attendees, including [former Reddy Ice Chief Financial Officer] Janusek. CW2 further stated that the attendees (including the various plant managers) all expressed knowledge and an understanding of the terms of the on-going unlawful agreement during the meeting."

f. "Additionally, it was also regularly discussed amongst various Reddy Ice employees that Home City was a party to the unlawful agreement, according to CW2. CW2 stated that Reddy Ice employees mentioned that Home City was represented at the meeting during which defendant Brick and Arctic Glacier's Chief Executive Officer met to divvy up the California and Arizona markets. With respect to Home City, CW2 was told by other Reddy Ice employees that Reddy Ice and Arctic Glacier had agreed to stay out of certain Mid-West states where Home City had a presence. During the course of CW2's employment, CW2 also gained first-hand knowledge that [] Weaver and Janusek knew of the unlawful allocation agreement with Home City."

g. "Further according to CW2, although it appeared to the public that Arctic Glacier did not have a connection to the 'consortium' at the time that Reddy Ice sold its manufacturing operations, [] Brick knew that the consortium of companies that acquired Reddy Ice's manufacturing and distribution facilities in California was in fact a straw man set up by

> agreement between Reddy Ice and Arctic Glacier through which Arctic Glacier would subsequently acquire the packaged ice facilities in California. CW2 stated that Reddy Ice wanted to keep the details of Arctic Glacier's involvement 'less obvious' since Reddy Ice was a public company."

DEFENDANTS' ACQUISITIONS ARE FURTHER EVIDENCE OF THE CONSPIRACY

64. Over the last several years, Reddy Ice, Arctic Glacier and Home City have executed a strategy of acquiring competitors. Each defendant knew that the other defendants were implementing a strategy of growth by acquisition in the United States. As a result of their identical strategies, defendants understood that the biggest threat to success was competition from each other.

65. In 1997, Arctic Glacier initially entered some of Reddy Ice's and Home City's territories as it had no operations in the United States. This entry induced Reddy Ice and Home City to enter into an agreement with Arctic Glacier in which they allocated territories and customers. As a result, defendants have very little overlap in the territories in which they sell packaged ice.

66. Defendants' activities in California offer an example of how the conspiracy operated. Reddy Ice and Arctic Glacier agreed that Arctic Glacier could have California, and that Arctic Glacier would not compete with Reddy Ice in Arizona.

67. As a result of its acquisitions, in 1998 Reddy Ice had a significant presence in California with 5 facilities. In 1997, about 10% of Reddy Ice's revenue was from California. Indeed, in 1998 Reddy Ice stated that California was a significant market for it. In 2001, however, despite what Reddy Ice described as an increased presence in the state, it stopped selling packaged ice in California. Since 2001, Reddy Ice has not attempted to compete in one of the largest and most attractive packaged ice territories in the United States.

68. Reddy Ice's withdrawal from the California market allowed Artic Glacier to expand its control over that state. For example, in 2006, Arctic Glacier acquired 6 companies in California for $188.5 million and in 2007 Arctic Glacier acquired Union-Pacific L.P. of Los Angeles, the leading packaged ice manufacturer in the area.

69. In the absence of a conspiracy, one would expect that defendants would have competing facilities and overlapping sales territories. Yet, today defendants do not sell packaged ice in overlapping territories (with few insignificant exceptions). The lack of such competition is only economically rational behavior to profit-maximizing firms if they have agreed not to compete throughout the country.

UNJUSTIFIED PRICE INCREASES

70. Beginning on about January 1, 2001, the prices that direct customers have paid defendants for packaged ice have increased each year at a rate that cannot be explained by the costs of manufacturing or distribution.

71. During this same period, Reddy Ice has admitted that its EBITDA (earnings before interest, taxes, depreciation and amortization) has grown "substantially faster than revenue."

72. During the class period, defendants obtained significant excess capacity. In the face of stable demand and excess capacity, defendants were able to increase prices at a rate greater than any increase in marginal costs. It is economically implausible that such price increases would have stuck in the absence of a conspiracy.

OPPORTUNITIES TO CONSPIRE

73. Defendants are members of several trade associations relating to the packaged ice industry. Defendants' respective executives have served on the boards of directors and various

standing committees of these organizations. These trade associations hold regular meetings of their boards, committees, and members, which defendants' representatives have attended, and which provide the opportunity for defendants to meet and communicate with each other concerning the markets, customers, and prices of packaged ice.

74. Defendants are members of the International Packaged Ice Association ("IPIA"), headquartered in Tampa, Florida. Ben Key, Reddy Ice's former Executive Vice President of Sales and Marketing, recently served as the Chairman of the IPIA executive committee. The Board of Directors for IPIA includes the Director of Marketing for Reddy Ice, and the President and CEO of Arctic Glacier. IPIA's Marketing Committee has been comprised of these same individuals, along with Home City's Sedler, who recently pled guilty on behalf of Home City to antitrust violations. The IPIA Board of Directors, along with its committees, holds regular meetings throughout the year in addition to its annual meeting. Defendants are also members of regional trade associations and their representatives regularly attend meeting within these regional trade associations.

INJURY TO PLAINTIFFS AND THE CLASS

75. Defendants' conduct has had the following effects:

a. price competition has been restrained, suppressed, or eliminated with respect to packaged ice in each and every state in the continental United States and District of Columbia;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels in each and every state in the continental United States and District of Columbia; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice in each and every state in the continental United States and District of Columbia.

76. As a result of the contract, combination or conspiracy, plaintiffs and class members have sustained injury. They have paid more for packaged ice than they would have in the absence of the conspiracy.

AFFIRMATIVE CONCEALMENT

77. Defendants' conspiracy by its nature was inherently self-concealing. Plaintiffs had no knowledge of defendants' unlawful combination or conspiracy. Defendants also undertook affirmative acts of concealment of their combination or conspiracy, including their attendance at secret meetings, and engagement in secret conversations concerning the allocation of markets and customers and price increases for packaged ice. They issued or caused to be issued public statements, which falsely attributed price increases for packaged ice to factors other than defendants' illegal scheme and unlawful conduct. These false and misleading statements were directed and made to indirect purchasers (including plaintiffs and the class) in each and every state in the continental United States and District of Columbia.

78. Although plaintiffs exercised due diligence throughout the class period, they did not, and could not, have discovered defendants' unlawful combination or conspiracy any earlier than March 5, 2008 when news of the search of Reddy Ice's headquarters was first reported. They have still been unable to uncover the full extent of the conspiracy and the identity of all of the co-conspirators.

COVER-UP OF ARCTIC GLACIER INC.'S ROLE IN THE CONSPIRACY

79. Through Hugh A. Adams, who holds the position of Secretary and General Counsel of Arctic Glacier Inc., Arctic Glacier International Inc. stated in its plea agreement, and subsequently confirmed under oath in its plea allocution, that "through certain of its executives

and employees of its subsidiary corporations and its predecessor company acquired in December 2004, [it] participated in [the] conspiracy."

80. Corbin stated in his plea agreement, and subsequently confirmed under oath in his plea allocution, that "he served as Vice President, Sales and Marketing of Arctic Glacier International Inc." when he participated in the conspiracy.

81. Larson stated in his plea agreement, and subsequently confirmed under oath in his plea allocution, that he "was employed by Arctic Glacier International Inc." when he participated in the conspiracy.

82. Cooley stated in his plea agreement, and subsequently confirmed under oath in his plea allocution, that he "was Vice President, Sales and Marketing of Arctic Glacier International Inc." when he participated in the conspiracy.

83. Each of these statements was false. In their opposition to the motion to disqualify Jones Day and Dykema Gossett (Dkt. #276) filed on August 16, 2010, Arctic Glacier, Corbin, Larson and Cooley revealed for the first time that Corbin, Larson and Cooley were in fact employed by Arctic Glacier Inc. when they participated in the conspiracy, and that each of these individuals' acts "were undertaken during the course of their employment with [Arctic Glacier Inc.]".

84. Although plaintiffs exercised due diligence throughout the class period, plaintiffs could not have uncovered Arctic Glacier Inc.'s role in the conspiracy any earlier than August 16, 2010, when Arctic Glacier and Corbin, Larson and Cooley admitted that these individuals were employed by Arctic Glacier Inc. when they committed their crimes. Plaintiffs still do not know the full extent of each Arctic Glacier entity's role in the conspiracy.

COUNT ONE

(ON BEHALF OF ALL PLAINTIFFS)

(VIOLATION OF 15 U.S.C. § 1)

(FOR INJUNCTIVE RELIEF ONLY)

85. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs as if fully set forth herein.

86. Beginning at least as early as January 1, 2001 and continuing until at least March 5, 2008, the exact dates being currently unknown to plaintiffs, defendants entered into and engaged in a contract, combination or conspiracy in unreasonable restraint of trade and commerce in violation of 15 U.S.C. § 1.

87. Plaintiffs and the class have no adequate remedy at law and will suffer irreparable harm unless defendants are enjoined from continuing to implement their unlawful agreement in the future and the Court remedies the conditions they created in the packaged ice industry in furtherance of their conspiracy. Otherwise, plaintiffs and the class will continue to pay more for packaged ice than they would have in the absence of the conspiracy

COUNT TWO

(ON BEHALF OF PLAINTIFFS ACKER, SIMASKO AND STANFORD ONLY)

(VIOLATION OF MICH. COMP. LAWS ANN. § 445.772)

88. Plaintiffs Acker, Simasko and Stanford repeat and reallege each and every allegation in the preceding paragraphs as if fully set forth herein.

89. Indirect purchasers in Michigan were targets of defendants' conspiracy.

90. Defendants' conspiracy had each of the following intended effects in Michigan:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

91. Defendants' conduct was malicious, flagrant and intended to harm plaintiffs and the class or undertaken with a reckless disregard for their rights.

92. Defendants have violated Mich. Comp. Laws Ann. § 445.772.

93. By reason of the foregoing, plaintiffs Acker, Simasko and Stanford and each member of the class paid more for packaged ice than they would have paid in the absence of such conduct. As a result, plaintiffs Acker, Simasko and Stanford and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT THREE

(ON BEHALF OF PLAINTIFF GOODE ONLY)

(VIOLATION OF N.C. GEN. STAT. § 75-1)

94. Plaintiff Goode repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

95. Indirect purchasers in North Carolina were targets of defendants' conspiracy.

96. Defendants' conduct had each of the following intended effects in North Carolina:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

97. Defendants' conduct was malicious, flagrant and intended to harm plaintiffs and the class or undertaken with a reckless disregard for their rights.

98. Defendants have violated N.C. Gen. Stat. § 75-1.

99. By reason of the foregoing, plaintiff Goode and each member of the class paid more for packaged ice in North Carolina than they would have paid in the absence of such conduct. As a result, plaintiff Goode and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT FOUR

(ON BEHALF OF PLAINTIFF HERRON ONLY)

(VIOLATION OF MINN. STAT. § 325D.51)

100. Plaintiff Herron repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

101. Indirect purchasers in Minnesota were targets of defendants' conspiracy.

102. Defendants' conspiracy had each of the following intended effects in Minnesota:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

103. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Herron and the class or undertaken with a reckless disregard for their rights.

104. Defendants have violated Minn. Stat. § 325D.51.

105. By reason of the foregoing, plaintiff Herron and each member of the class paid more for packaged ice in Minnesota than they would have paid in the absence of such conduct.

As a result, plaintiff Herron and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT FIVE

(ON BEHALF OF PLAINTIFFS BUTTARS, MANCUSI AND PALOMBELLA ONLY)

(VIOLATION OF N.Y. GEN. BUS. LAW § 340)

106. Plaintiffs Buttars, Mancusi and Palombella repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

107. Indirect purchasers in New York were targets of defendants' conspiracy.

108. Defendants' conspiracy had each of following intended effects in New York:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by the indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

109. Defendants' conduct was malicious, flagrant and intended to harm plaintiffs and the class or undertaken with a reckless disregard for their rights.

110. Defendants have violated the N.Y. Gen. Bus. Law § 340.

111. By reason of the foregoing, plaintiffs Buttars, Mancusi and Palombella and each member of the class paid more for packaged ice in New York than they would have paid in the absence of such conduct. As a result, plaintiffs Buttars, Mancusi and Palombella and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT SIX

(ON BEHALF OF PLAINTIFF STANFORD ONLY)

(VIOLATION OF WIS. STAT. ANN. § 133.03)

112. Plaintiff Stanford repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

113. Indirect purchasers in Wisconsin were targets of defendants' conspiracy.

114. Defendants' conspiracy had each of the following intended effects in Wisconsin:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by the indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

115. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Stanford and the class or undertaken with a reckless disregard for their rights.

116. Defendants have violated Wis. Stat. Ann. § 133.03.

117. By reason of the foregoing, plaintiff Stanford and each member of the class paid more for packaged ice in Wisconsin than they would have paid in the absence of such conduct. As a result, plaintiff Stanford and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT SEVEN

(ON BEHALF OF PLAINTIFF FEENEY ONLY)

(VIOLATION OF CAL. BUS. & PROF. CODE §§ 16722 & 16726)

118. Plaintiff Feeney repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

119. Indirect purchasers in California were targets of defendants' conspiracy.

120. Defendants' conspiracy had each of the following intended effects in California:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by the indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

121. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Feeney and the class or undertaken with a reckless disregard for their rights.

122. Defendants have violated Cal. Bus. & Prof. Code §§ 16722 & 16726.

123. By reason of the foregoing, plaintiff Feeney and each member of the class paid more for packaged ice in California than they would have paid in the absence of such conduct. As a result, plaintiff Feeney and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT EIGHT

(ON BEHALF OF PLAINTIFF PALOMBELLA ONLY)

(VIOLATION OF TENN. CODE ANN. § 47-25-102)

124. Plaintiff Palombella repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

125. Indirect purchasers in Tennessee were targets of defendants' conspiracy.

126. Defendants' conspiracy had each of the following intended effects in Tennessee:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by the indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

127. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Palombella and the class or undertaken with a reckless disregard for their rights.

128. Defendants have violated Tenn. Code Ann. § 47-25-102.

129. By reason of the foregoing, plaintiff Palombella and each member of the class paid more for packaged ice in Tennessee than they would have paid in the absence of such conduct. As a result, plaintiff Palombella and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT NINE

(ON BEHALF OF PLAINTIFF FEENEY ONLY)

(VIOLATION OF NEV. REV. STAT. § 598A.060)

130. Plaintiff Feeney repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

131. Indirect purchasers in Nevada were targets of defendants' conspiracy.

132. Defendants' conspiracy had each of the following intended effects in Nevada:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels with such artificially inflated prices paid by the indirect purchasers; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

133. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Feeney and the class or undertaken with a reckless disregard for their rights.

134. Defendants have violated Nev. Rev. Stat. § 598A.060.

135. By reason of the foregoing, plaintiff Feeney and each member of the class paid more for packaged ice in Nevada than they would have paid in the absence of such conduct. As a result, plaintiff Feeney and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT TEN

(ON BEHALF OF PLAINTIFFS BUTTARS AND FEENEY ONLY)

(VIOLATION OF ME REV. STAT. ANN., TIT. 10, § 1101);

136. Plaintiffs Buttars and Feeney repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

137. Indirect purchasers in Maine were targets of defendants' conspiracy.

138. Defendants' conspiracy had each of the following intended effects in Maine:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

139. Defendants' conduct was malicious, flagrant and intended to harm plaintiffs and the class or undertaken with a reckless disregard for their rights.

140. Defendants have violated ME Rev. Stat. Ann., Tit. 10, § 1101.

141. By reason of the foregoing, plaintiffs Buttars and Feeney and each member of the class paid more for packaged ice in Maine than they would have paid in the absence of such conduct. As a result, plaintiff Buttars and Feeney and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT ELEVEN

(ON BEHALF OF PLAINTIFF PRENTICE ONLY)

(VIOLATION OF ARIZ. REV. STAT. ANN. § 44-1402)

142. Plaintiff Prentice repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

143. Indirect purchasers in Arizona were targets of defendants' conspiracy.

144. Defendants' conspiracy had each of the following intended effects in Arizona:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

145. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Prentice and the class or undertaken with a reckless disregard for their rights.

146. Defendants have violated Ariz. Rev. Stat. Ann. § 44-1402.

147. By reason of the foregoing, plaintiff Prentice and each member of the class paid more for packaged ice in Arizona than they would have paid in the absence of such conduct. As a result, plaintiff Prentice and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT TWELVE

(ON BEHALF OF PLAINTIFFS GROVES AND STRAUSS ONLY)

(VIOLATION OF N.M. STAT. ANN. § 57-1-1)

148. Plaintiffs Groves and Strauss repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

149. Indirect purchasers in New Mexico were targets of defendants' conspiracy.

150. Defendants' conspiracy had each of the following intended effects in New Mexico:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

151. Defendants' conduct was malicious, flagrant and intended to harm plaintiffs Groves and Strauss and the class or undertaken with a reckless disregard for their rights.

152. Defendants have violated N.M. Stat. Ann. § 57-1-1.

153. By reason of the foregoing, plaintiffs Groves and Strauss and each member of the class paid more for packaged ice in New Mexico than they would have paid in the absence of such conduct. As a result, plaintiffs Groves and Strauss and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT THIRTEEN

(ON BEHALF OF PLAINTIFF DELOSS ONLY)

(VIOLATION OF IOWA COMPETITION LAW, § 553.4)

154. Plaintiff DeLoss repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

155. Indirect purchasers in Iowa were targets of defendants' conspiracy.

156. Defendants' conspiracy had each of the following intended effects in Iowa:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

157. Defendants' conduct was malicious, flagrant and intended to harm plaintiff DeLoss and the class or undertaken with a reckless disregard for their rights.

158. Defendants have violated Iowa Competition Law, § 553.4.

159. By reason of the foregoing, plaintiff DeLoss and each member of the class paid more for packaged ice in Iowa than they would have paid in the absence of such conduct. As a result, plaintiff DeLoss and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT FOURTEEN

(ON BEHALF OF PLAINTIFF CROOM ONLY)

(VIOLATION OF NEB. REV. STAT. § 59-801)

160. Plaintiff Croom repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

161. Indirect purchasers in Nebraska were targets of defendants' conspiracy.

162. Defendants' conspiracy had each of the following intended effects in Nebraska:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

163. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Croom and the class or undertaken with a reckless disregard for their rights.

164. Defendants have violated Neb. Rev. Stat. § 59-801.

165. By reason of the foregoing, plaintiff Croom and each member of the class paid more for packaged ice in Nebraska than they would have paid in the absence of such conduct. As a result, plaintiff Croom and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT FIFTEEN

(ON BEHALF OF PLAINTIFF CROOM ONLY)

(VIOLATION OF NEB. REV. STAT. § 59-1603)

166. Plaintiff Croom repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

167. Indirect purchasers in Nebraska were targets of defendants' conspiracy.

168. Defendants' conspiracy had each of the following intended effects in Nebraska:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

169. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Croom and the class or undertaken with a reckless disregard for their rights.

170. Defendants have violated Neb. Rev. Stat. § 59-1603.

171. By reason of the foregoing, plaintiff Croom and each member of the class paid more for packaged ice in Nebraska than they would have paid in the absence of such conduct. As a result, plaintiff Croom and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT SIXTEEN

(ON BEHALF OF PLAINTIFF SWEENEY ONLY)

(VIOLATION OF MASS. GEN. LAWS ANN. CH. 93A, § 2)

172. Plaintiff Sweeney repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

173. None of the defendants maintain a place of business in Massachusetts. None of the defendants keep assets in Massachusetts.

174. Indirect purchasers in Massachusetts were targets of defendants' conspiracy.

175. Defendants' conspiracy had each of the following intended effects in Massachusetts:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

176. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Sweeney and the class or undertaken with a reckless disregard for their rights.

177. Defendants have violated Mass. Gen. Laws Ann. Ch. 93a, § 2.

178. By reason of the foregoing, plaintiff Sweeney and each member of the class paid more for packaged ice in Massachusetts than they would have paid in the absence of such conduct. As a result, plaintiff Sweeney and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT SEVENTEEN

(ON BEHALF OF PLAINTIFF SPELLMEYER ONLY)

(VIOLATION OF KAN. STAT. ANN. § 50-112)

179. Plaintiff Spellmeyer repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

180. Indirect purchasers in Kansas were targets of defendants' conspiracy.

181. Defendants' conspiracy had each of the following intended effects in Kansas:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

182. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Spellmeyer and the class or undertaken with a reckless disregard for their rights.

183. Defendants have violated Kan. Stat. Ann. § 50-112.

184. By reason of the foregoing, plaintiff Spellmeyer and each member of the class paid more for packaged ice in Kansas than they would have paid in the absence of such conduct. As a result, plaintiff Spellmeyer and each member of the class have been injured and damaged in an amount presently undetermined.

COUNT EIGHTEEN

(ON BEHALF OF PLAINTIFF WINNIG ONLY)

(VIOLATION OF MISS. CODE ANN. § 75-21-1)

185. Plaintiff Winnig repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

186. Indirect purchasers in Mississippi were targets of defendants' conspiracy.

187. Defendants' conspiracy had each of the following intended effects in Mississippi:

a. price competition has been restrained, suppressed, or eliminated;

b. the price of packaged ice has been raised, fixed, maintained, or stabilized at supra-competitive levels; and

c. indirect purchasers of packaged ice have been deprived of free and open competition for the sale of packaged ice.

188. Defendants' conduct was malicious, flagrant and intended to harm plaintiff Winnig and the class or undertaken with a reckless disregard for their rights.

189. Defendants have violated Miss. Code Ann. § 75-21-1.

190. By reason of the foregoing, plaintiff Winnig and each member of the class paid more for packaged ice in Mississippi than they would have paid in the absence of such conduct. As a result, plaintiff Winnig and each member of the class have been injured and damaged in an amount presently undetermined.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that the Court enter judgment as follows:

a. Determining that this action may be maintained as a class action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure;

b. Enjoining defendants from continuing to implement their unlawful agreement and ordering defendants to take such actions as necessary to remediate the market conditions that defendants created which would allow them to maintain, or continue to increase, prices above competitive levels;

c. Awarding plaintiffs and the relevant class members compensatory damages under the state statutes in an amount to be proven at trial, trebled according to law against defendants,

jointly and severally;

d. Awarding plaintiffs and the relevant class members punitive, exemplary, statutory, and full consideration damages under the state laws that permit such recoveries;

e. Ordering defendants to disgorge their profits earned as a result of their wrongful conduct and ordering them to make restitution to plaintiffs and the class under the state laws that permit such relief;

f. Awarding plaintiffs and the class pre-judgment and post-judgment interest;

g. Awarding plaintiffs and the class their costs of suit, including reasonable attorneys' fees; and

h. Granting plaintiffs and the class such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable in this case.

Dated: May 25, 2011

s/ Matthew S. Wild

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2011, I electronically filed the within Consolidated Class Action Complaint with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

s/ Matthew S. Wild

Original Image of 723 F.Supp.2d 987 (PDF)

723 F.Supp.2d 987
United States District Court,
E.D. Michigan,
Southern Division.

In re PACKAGED ICE ANTITRUST LITIGATION.
Direct Purchasers Action.

Case No. 08–MD–01952. | July 1, 2010.

Synopsis

Background: Direct and indirect purchasers of packaged ice brought 68 actions in multiple districts against sellers and manufacturers of ice and related defendants, alleging an unlawful conspiracy to allocate markets and to fix, raise, maintain and/or stabilize the price of packaged ice in the United States. Plaintiffs moved for coordinated or centralized pretrial proceedings. The Judicial Panel on Multidistrict Litigation (JPML), John G. Heyburn II, Chairman, 560 F.Supp.2d 1359, centralized proceedings in United States District Court for Eastern District of Michigan. Defendants moved to dismiss for lack of personal jurisdiction and failure to state claim upon which relief could be granted.

Holdings: The District Court, Paul D. Borman, J., held that:

[1] plaintiffs sufficiently stated claim that defendants engaged in conspiracy to allocate markets in violation of Section 1 of Sherman Act, and

[2] plaintiffs sufficiently stated claim that they were entitled to equitable tolling of four-year statute of limitations for bringing claim under Section 1 of Sherman Act due to fraudulent concealment.

Motions denied.

West Headnotes (15)

[1] **Federal Courts**
Affidavits and other evidence
170B Federal Courts
170BII Venue
170BII(A) In General
170Bk96 Affidavits and other evidence
Plaintiffs bear the burden of establishing that personal jurisdiction exists. Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.

[2] **Federal Courts**
Affidavits and other evidence
170B Federal Courts
170BII Venue
170BII(A) In General
170Bk96 Affidavits and other evidence
The Court has discretion to make a determination as to the existence of personal jurisdiction without an evidentiary hearing but plaintiff must, by affidavit, set forth specific facts demonstrating that the court has jurisdiction. Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.

[3] **Federal Courts**
Affidavits and other evidence
170B Federal Courts
170BII Venue
170BII(A) In General
170Bk96 Affidavits and other evidence
In determining whether a court has personal jurisdiction, the court must consider the pleadings and affidavits submitted by the parties in the light most favorable to the plaintiff. Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.

[4] **Federal Courts**
Affidavits and other evidence
170B Federal Courts
170BII Venue
170BII(A) In General
170Bk96 Affidavits and other evidence
Where there has been no evidentiary hearing, the plaintiff need only present a prima facie case in support of personal jurisdiction. Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.

[5] **Antitrust and Trade Regulation**
Food and beverages; restaurants
Antitrust and Trade Regulation

Food and beverages; restaurants

29T Antitrust and Trade Regulation
29TVI Antitrust Regulation in General
29TVI(E) Particular Industries or Businesses
29Tk582 Food and beverages; restaurants
29T Antitrust and Trade Regulation
29TX Antitrust and Prices
29TX(G) Particular Industries or Businesses
29Tk872 Food and beverages; restaurants

Allegations that several of high-level executives of sellers and manufacturers of packaged ice, along with related defendants, agreed to stay out of each other's territories and markets for ice and to allocate customers in each market, concealed their conduct from sellers while publicly representing that their pricing activities were unilateral rather than collusive and based on legitimate business purposes, was sufficient to state claim that defendants engaged in an unlawful conspiracy to allocate markets and to fix, raise, maintain and/or stabilize the price of packaged ice in the United States in violation of Section 1 of Sherman Act. Sherman Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

[6] **Antitrust and Trade Regulation**

Food and beverages; restaurants

29T Antitrust and Trade Regulation
29TVI Antitrust Regulation in General
29TVI(E) Particular Industries or Businesses
29Tk582 Food and beverages; restaurants

Government investigations and guilty pleas of number of sellers and manufacturers of packaged ice and their corporate executives, as well as related defendants, supported plausibility of nationwide conspiracy among sellers and manufacturers to impermissibly allocate markets in violation of Section 1 of Sherman Act. Sherman Act, § 1, 15 U.S.C.A. § 1.

3 Cases that cite this headnote

[7] **Antitrust and Trade Regulation**

Food and beverages; restaurants

29T Antitrust and Trade Regulation
29TVI Antitrust Regulation in General
29TVI(E) Particular Industries or Businesses
29Tk582 Food and beverages; restaurants

Anticipated testimony of confidential witnesses, including former employees of sellers and manufacturers of packaged ice as well as related defendants, supported plausibility of nationwide conspiracy among sellers and manufacturers to impermissibly allocate markets in violation of Section 1 of Sherman Act. Sherman Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

[8] **Antitrust and Trade Regulation**

Presumptions and burden of proof

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(B) Actions
29Tk973 Evidence
29Tk976 Presumptions and burden of proof

Allegations that a market is characterized by economic factors that courts and antitrust experts and economists have found are conducive to collusive behavior, support an inference of plausibility of conspiracy to allocate customers nationwide in violation of Section 1 of Sherman Act. Sherman Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

2 Cases that cite this headnote

[9] **Antitrust and Trade Regulation**

Food and beverages; restaurants

29T Antitrust and Trade Regulation
29TVI Antitrust Regulation in General
29TVI(E) Particular Industries or Businesses
29Tk582 Food and beverages; restaurants

Market structure of packaged ice industry, as well as fact that several of high-level executives of sellers and manufacturers of packaged ice, along with related defendants, purportedly agreed to stay out of each other's territories and markets for ice and to allocate customers in each market supported plausibility of nationwide conspiracy among sellers and manufacturers of packaged ice to impermissibly allocate markets in violation of Section 1 of Sherman Act. Sherman Act, § 1, 15 U.S.C.A. § 1.

[10] **Antitrust and Trade Regulation**

Territorial Agreements

29T Antitrust and Trade Regulation
29TVI Antitrust Regulation in General
29TVI(B) Cartels, Combinations, Contracts, and Conspiracies in General
29Tk549 Territorial Agreements
29Tk550 In general

A mere opportunity to conspire, without more, cannot form the basis of a claim of conspiracy to allocate markets in violation of Section 1 of Sherman Act. Sherman Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

1 Cases that cite this headnote

[11] **Limitation of Actions**

Concealment of Cause of Action

Limitation of Actions

Suspension or stay in general; equitable tolling

241 Limitation of Actions
241II Computation of Period of Limitation
241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action
241k104 Concealment of Cause of Action
241k104(1) In general
241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k104.5 Suspension or stay in general; equitable tolling

In order to establish equitable tolling by the doctrine of fraudulent concealment, the plaintiffs must allege and establish that: (1) defendants concealed the conduct that constitutes the cause of action; (2) defendants' concealment prevented plaintiffs from discovering the cause of action within the limitations period; and (3) until discovery, plaintiffs exercised due diligence in trying to find out about the cause of action.

[12] **Fraud**

Questions for Jury

184 Fraud
184II Actions
184II(F) Trial
184k64 Questions for Jury
184k64(1) In general

Where there is a dispute as to the issue of fraudulent concealment, the question is one for the jury.

[13] **Limitation of Actions**

What constitutes concealment

Limitation of Actions

Suspension or stay in general; equitable tolling

241 Limitation of Actions
241II Computation of Period of Limitation
241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action
241k104 Concealment of Cause of Action
241k104(2) What constitutes concealment
241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k104.5 Suspension or stay in general; equitable tolling

Allegations that sellers and manufacturers of packaged ice represented publicly, both to customers and otherwise, that their pricing activities were unilateral, rather than collusive, and based upon legitimate business purposes, such as increased costs were sufficient to state claim that direct and indirect purchasers of ice were entitled to equitable tolling of four-year statute of limitations for bringing claim under Section 1 of Sherman Act due to fraudulent concealment. Clayton Act, § 4(b), 15 U.S.C.A. § 15(b).

[14] **Federal Courts**

Affidavits and other evidence

170B Federal Courts
170BII Venue
170BII(A) In General
170Bk96 Affidavits and other evidence

Plaintiffs bear the burden of establishing that personal jurisdiction exists; however, a plaintiff is only required to meet this burden when challenged by a motion to dismiss for lack of personal jurisdiction, which the moving defendant supports by attaching affidavits. Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.

[15] **Federal Courts**
Affidavits and other evidence
170B Federal Courts
170BII Venue
170BII(A) In General
170Bk96 Affidavits and other evidence
The Court has discretion to make a determination as to the existence of personal jurisdiction without an evidentiary hearing.

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Opinion

OPINION AND ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS (DKT. NOS. 202, 203)

PAUL D. BORMAN, District Judge.

This matter is before the Court on (1) Defendants Reddy Ice Holdings, Inc. and Reddy Ice Corporation's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) (Dkt. No. 202), and (2) Defendants Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and Fed.R.Civ.P. 12(b)(2) (Dkt. No. 203). Plaintiffs filed a Consolidated Response to both motions (Dkt. No. 212). Both Defendants have filed replies. (Dkt. Nos. 225, 226.) The Court heard oral argument on June 24, 2010. For the reasons that follow, the Court DENIES Defendants' motions.

I. BACKGROUND

This action is the lead case in the consolidated class action *In Re Packaged Ice Antitrust Litig.*, No. 08–MD–01952. In ***996** this multidistrict litigation involving 68 consolidated actions, Plaintiffs are both direct purchasers (retail stores and gas stations who purchased from Defendants) and indirect purchasers (individuals who purchased from retail stores and gas stations) of Packaged Ice from Defendants in the United States. In this Opinion and Order, the Court addresses Defendants' motions to dismiss the Direct Purchasers' Consolidated Amended Class Action Complaint ("CAC").

The Direct Purchasers allege that Defendant Reddy Ice Holdings, Inc. and its wholly owned subsidiary Reddy Ice Corporation (the "Reddy Ice Defendants"), Defendant Arctic Glacier Income Fund ("AGIF"), its wholly owned subsidiary Arctic Glacier, Inc. ("AG") and AG's wholly owned subsidiary Arctic Glacier International, Inc. ("AGI") (collectively the "Arctic Glacier Defendants") and Defendant Home City Ice Company ("Home City") conspired to allocate customers and markets throughout the United States, in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. The Reddy Ice and Arctic Glacier Defendants now move to dismiss Plaintiffs' CAC under Federal Rule of Civil Procedure 12(b)(6). Arctic Glacier Income Fund and Arctic Glacier Inc. additionally move for dismissal under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. Defendant Home City and Direct Purchaser Plaintiffs have reached a proposed settlement. [1]

1 On November 13, 2009, the Direct Purchaser Plaintiffs filed a motion for preliminary approval of a $13.5 million dollar settlement with the Defendant Home City. (Dkt. No. 206.) On November 30, 2009, the Reddy Ice and Arctic Glacier Defendants filed a motion to stay consideration of the motion for preliminary approval, objecting that Plaintiffs have not demonstrated that the proposed class meets the requirements of Federal Rule of Civil Procedure 23. (Dkt. No. 211.) Both Plaintiffs and Home City filed responses to the motion to stay consideration of the motion for preliminary approval of the settlement, arguing that preliminary approval did not prejudice the non-settling Defendants' rights to contest class certification at a later time. (Dkt. Nos. 214, 218.) Both Plaintiffs and Home City filed replies to the non-settling Defendants' responses to Plaintiffs' motion to stay consideration of the motion for preliminary approval. (Dkt. Nos. 219, 221.) The motion to stay consideration of the motion for preliminary approval of the settlement is scheduled for hearing on July 21, 2010.

A. PROCEDURAL BACKGROUND–THE MULTIDISTRICT LITIGATION

In 2008, the Department of Justice ("DOJ") went public with an investigation into the packaged ice industry in the United States. Multiple civil antitrust actions were subsequently filed against the Reddy Defendants, the Arctic Glacier Defendants and Home City. On June 5, 2008, 560 F.Supp.2d 1359 (Jud.Pan.Mult.Lit.2008), Pursuant to 28 U.S.C. § 1407, the United States Judicial Panel on Multidistrict Litigation ("MDL") transferred all pending and subsequent related civil actions to this District, and ordered that they be assigned to this Court for coordinated or consolidated pretrial proceedings. (Transfer Order, Dkt. No. 1.) A total of 68 cases have been transferred and consolidated in accordance with the MDL Order. (Transfer Order, Conditional Transfer Orders 1–4, Dkt. Nos. 1, 9, 47, 70, 85.)

On June 1, 2009, 2009 WL 1518428, this Court appointed Kohn, Swift & Graft, P.C. as interim lead counsel and Gurewitz & Raben, PLLC as liaison counsel for the proposed

Direct Purchaser class. (Dkt. No. 175.) On July 17, 2009, the Court entered Case Management Order No. 1, directing the Direct Purchaser Plaintiffs (hereinafter "Plaintiffs") to file a Consolidated Amended Complaint and setting forth deadlines for answering, moving or ***997** otherwise responding to the Consolidated Amended Complaint and for responding to any motions filed. (Dkt. No. 185.) On September 15, 2009, Plaintiffs filed their Consolidated Amended Class Action Complaint ("CAC"). (Dkt. No. 198.) On October 30, 2009, the Reddy Defendants and the Arctic Glacier Defendants filed their motions to dismiss the CAC. (Dkt. Nos. 202, 203.) On November 30, 2009, Plaintiffs filed their combined response in opposition to the motions to dismiss. (Dkt. No. 212.) On December 30, 2009, Reddy Ice and Arctic Glacier filed their replies. (Dkt. Nos. 225, 226.)

B. FACTUAL ALLEGATIONS

Taking the well-pled allegations of Plaintiffs' CAC as true for purposes of this motion to dismiss, the following factual matters are established.[2] Reddy Ice, Arctic Glacier and Home City are among the three largest companies in the United States that manufacture and distribute Packaged Ice, with a combined market share of nearly 70%. (CAC ¶ 1.) "Packaged Ice" refers to ice that is made by the Defendants packaged in bags and sold as ice in blocks. (CAC ¶ 1.) The Direct Purchasers, whose CAC is challenged in this motion to dismiss, are retail stores and gas stations that purchased Packaged Ice directly from the Defendants. (CAC ¶¶ 5–10.)

2 In analyzing the allegations of Plaintiffs' CAC for purposes of this motion to dismiss, the Court takes judicial notice of, and at times refers to, allegations made in the Complaints filed in this Court in two related actions: *McNulty v. Reddy Ice Holdings, Inc.*, No. 08–13178 (a whistleblower complaint) and *Chamberlain v. Reddy Ice Holdings, Inc., et al.*, No. 08–13451 (a securities class action complaint). *See* Hinds County, Mississippi v. Wachovia Bank, et al., 700 F.Supp.2d 378, 395–96 (S.D.N.Y.2010) (court in lead action in multidistrict antitrust litigation taking judicial notice of first amended complaint filed in a related action, recognizing the court's inherent power to rely on matters of public record in deciding a motion to dismiss, citing Pani v. Empire Blue Cross Blue Shield, 152 F.3d 67, 75 (2d Cir.1998) and Rothman v. Gregor, 220 F.3d 81, 92 (2d Cir.2000)). *See also* Rodic v. Thistledown Racing Club, Inc., 615 F.2d 736, 738 (6th Cir.1980) (taking judicial notice of the facts alleged in a related state-court action "[b]ecause this court sits to decide real cases, not abstract questions of law, and because an adequate understanding of [the] case is essential to our decision.") Plaintiffs reiterate or paraphrase multiple allegations contained in the *McNulty* complaint and Arctic Glacier urges the Court to take judicial notice of the entirety of that related complaint. The Court will do the same with respect to the *Chamberlain* complaint, to which Plaintiffs also refer.

1. Allegations of Conspiracy

Martin McNulty is a former vice president of Party Time Ice who became a salesman for Arctic Glacier after it acquired Party Time in 2004. McNulty states that Reddy Ice, Arctic Glacier, Home City, and smaller packaged ice manufacturers such as Party Time, conspired to allocate territories and customers throughout the United States. (CAC ¶ 23.) Specifically, McNulty alleges that Keith Corbin, Arctic Glacier's Vice President of Sales at the time it acquired Party Time, informed McNulty that Arctic Glacier did not and would not compete with Home City, and further informed McNulty that Home City and Reddy Ice had agreed to geographically divide the United States market for the sale and delivery of Packaged Ice. (CAC ¶ 25.) Corbin also informed McNulty that representatives of Arctic Glacier and Home City met in Cincinnati as part of the monitoring of the ongoing conspiracy to address specific customer allocations and to reinforce their agreement to allocate customers and territories.[3] (CAC ¶ 26.)

3 This allegation is reiterated in the *McNulty* Complaint: "In January, 2005 ... Mr. Corbin further explained to [Mr. McNulty] that he had recently flown to Cincinnati to meet with Home City executives to discuss a dispute regarding which competitor would control customer stores located in a specific geography." (*McNulty, supra* No. 08–13178, Compl. ¶ 35.)

***998** An example of the agreement to geographically divide customers and markets was the arrangement under which Reddy Ice, which formerly had a significant presence in the state of California, with five facilities generating 10% of its revenue, curtailed selling its Packaged Ice in California, thereby allowing Arctic Glacier to sell in the California market free of competition from Reddy Ice. As part of this agreement, Arctic Glacier agreed not to compete in Arizona.[4] (CAC ¶¶ 28–29.) Similarly, as part of the agreement between Arctic Glacier and Reddy Ice, Arctic Glacier withdrew from competing in Oklahoma and New Mexico, while maintaining production and distribution facilities in the neighboring states of Kansas and Texas, allowing Reddy Ice to establish a

presence in Oklahoma and New Mexico, free of competition from Arctic Glacier. (CAC ¶ 30.)

4 In *Chamberlain,* the companion securities fraud case filed in this Court, based upon the same facts and circumstances as the antitrust cases, these allegations are reiterated with even greater particularity. (*See Chamberlain, supra* No. 08–13451, Amended Compl. ¶¶ 48–57.) According to the allegations of the *Chamberlain* complaint, which are based upon the anticipated testimony of four percipient confidential witnesses, Reddy Ice agreed to sell its California manufacturing operations to a consortium of California companies which would subsequently be acquired by Arctic Glacier.

On November 5, 2007, the DOJ filed a criminal information against Home City in the Southern District of Ohio, alleging a conspiracy to restrain trade during the period January 1, 2001 to July 17, 2007. (CAC ¶ 31.) On June 17, 2008, Thomas Sedler, President and CEO of Home City, agreed to prosecution by the criminal information and on October 18, 2007 pled guilty to violating Section 1 of the Sherman Act by participating in a conspiracy to restrain trade in the Packaged Ice industry. (CAC ¶¶ 32–33.) On October 18, 2007, Home City pled guilty to participating in a conspiracy to restrain trade by "agreeing with other packaged ice manufacturers to allocate customers and territories in southeastern Michigan and the Detroit, Michigan metropolitan area, beginning at least as early as January 1, 2001 until July 17, 2007, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1." (Plea Agreement, ¶ 2.) [5]

5 Plaintiffs refer to the Home City Plea Agreement in their CAC and the Court takes judicial notice of the details of that Plea, which is available on the DOJ website at http://www.justice.gov/atr/cases/f 234200/234211.htm. Currently pending before this Court is the Plaintiffs' motion to have the Court approve a proposed $13.5 million dollar class action settlement between Plaintiffs and Home City, benefitting a class consisting of "all purchasers of Packaged Ice *in the United States* who purchased directly from any of the Defendants or their subsidiaries or affiliates (including all predecessors thereof) at anytime during the period January 1, 2001 to March 6, 2008." (Motion for Preliminary Approval of Settlement with Home City Ice, Dkt. No. 206, Ex. A, Proposed Settlement Agreement, ¶ 9) (emphasis added). As part of the Proposed Settlement Agreement, Home City agrees to cooperate with Plaintiffs in their further prosecution of their nationwide antitrust conspiracy claim against the remaining Defendants, Arctic Glacier and Reddy Ice. (*Id.*¶ 28.)

On March 5, 2008, the DOJ Antitrust Division executed a search warrant at Reddy Ice's Dallas, Texas headquarters. (CAC ¶ 33.) Reddy Ice does not sell ice in Michigan. (Pls.'s Resp. 2.) Following the DOJ search, Reddy Ice formed a special Committee of its Board of Directors to conduct an internal investigation into Reddy Ice's conduct within the Packaged Ice industry and, on September 15, 2008, Reddy ***999** Ice announced that it had suspended Ben D. Key, the company's Executive Vice President of Sales and Marketing finding that Mr. Key had "likely violated Company policies and is associated with matters under investigation." (CAC ¶¶ 33–35.)

On or about October 5, 2009, Arctic Glacier International pled guilty in the Southern District of Ohio to participating in a "conspiracy to suppress and eliminate competition by agreeing with one or more packaged ice manufacturers to allocate customers in southeastern Michigan and the Detroit, Michigan metropolitan area, beginning January 1, 2001, and continuing until at least July 17, 2007, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1." (Arctic Glacier Plea Agreement, ¶ 2.) On or about that same date, Keith Corbin (then Vice President, Sales and Marketing, Arctic Glacier International Inc.), Frank Larson (then Executive Vice President, Operations, Arctic Glacier International Inc.) and Gary Cooley (then Vice President, Sales and Marketing, Arctic Glacier International, Inc.) all pled guilty in the Southern District of Ohio to participating in a conspiracy to suppress and eliminate competition by agreeing with other packaged ice manufacturers to allocate customers in southeastern Michigan and the Detroit, Michigan metropolitan area, beginning at least as early as January 1, 2001 in the case of Arctic Glacier and Home City, at least as early as March 1, 2005 for Messrs. Larson and Corbin and at least as early as June 1, 2006 in the case of Mr. Cooley, and continuing for all defendants until at least July 17, 2007, in violation of the Sherman Antitrust Act 15 U.S.C. § 1.[6] Arctic Glacier has also commenced an internal investigation into allegations that it was involved in an antitrust conspiracy and, as a result of its investigation, has suspended Frank Larson, its Executive Vice President of Operations and Gary Cooley, Vice President of Sales. (CAC ¶¶ 36–37.) [7]

6 In its motion to dismiss, Arctic Glacier refers the Court to the Arctic Glacier plea agreement (Arctic

Glacier Mot. 10 n. 2) and the Court takes judicial notice of the details of that agreement, as well as the related agreements of the Arctic Glacier executives, which are available on the DOJ website. The Arctic Glacier plea agreement is available at www.justice.gov/atr/cases/f251200/251299.htm. Mr. Corbin's plea agreement is available at http://www.justice.gov/atr/cases/f250900/250963.htm; Mr. Larson's plea agreement is available at http://www.justice.gov/atr/cases/f 250900/250967.htm; Mr. Cooley's plea agreement is available at http://www. justice.gov/atr/cases/f250900/250959.htm.

7 The Court also notes that, according to the allegations in the related securities case, *Chamberlain,* several state attorneys general are also investigating anticompetitive behavior in the Packaged Ice industry. "Reddy Ice has disclosed that the Attorney Generals of 19 states, including Michigan, Arizona and Florida, are investigating agreements in restraint of trade and/or price fixing with respect to the pricing or market allocation of packaged ice." (*Chamberlain, supra* No. 08–13451, Amended Compl. ¶ 18.)

Defendant manufacturers are members of the International Packaged Ice Association ("IPIA"), a trade association headquartered in Tampa, Florida. Ben Key, Reddy Ice's now-suspended Executive Vice President of Sales and Marketing, recently served as the Chairman of the **IPIA** executive committee. The Board of Directors of the IPIA includes the Director of Marketing for Reddy Ice, and the President and CEO of Arctic Glacier. These same individuals, along with Home City's Tom Sedler who recently pled guilty on behalf on Home City to antitrust violations, serve or have served on IPIA's Marketing Committee. (CAC ¶ 53.) The IPIA Board of Directors, along with its committee, hold regular meetings throughout the year in addition to its annual meeting. (CAC ¶ 54.) In addition to IPIA, there are a number of regional trade associations on ***1000** which Defendants' executives have served as board members and/or on various committees. (CAC ¶ 55.) Plaintiffs allege that membership in and service on these various trade association committees and boards have provided Defendants with the opportunity to meet and communicate with each other concerning the Packaged Ice markets, customers and pricing. (CAC ¶ 52.)

2. Allegations of Fraudulent Concealment

Plaintiffs allege that Defendants affirmatively concealed their anticompetitive conduct from Plaintiffs and other Class members, thereby tolling the statute of limitations through at least March 6, 2008 when it first became public that the DOJ had executed search warrants. (CAC ¶ 58.) "Before March, 2008, Defendants represented publicly, both to customers and otherwise, that their pricing activities were unilateral, rather than collusive, and based upon legitimate business purposes, such as increased costs. In making those false public representations, Defendants misled Plaintiffs and members of the Class as to the true, collusive and coordinated nature of their territorial and customer allocation and other illegal anticompetitive activities."[8] (CAC ¶ 59.) Plaintiffs could not have discovered Defendants' unlawful conduct at any time prior to March 6, 2008 because it was carried out in a manner designed to avoid detection and had the effect of raising, fixing maintaining or stabilizing prices at artificially high levels, and was by its very nature self-concealing. (CAC ¶ 60–62.)

8 In the *Chamberlain* securities fraud case, these allegations are reiterated, including extensive quotes from the Reddy Ice 2005 Form 10–K, which indicates that the Company abides by its own internal Code of Business Conduct and Ethics, which specifically states that the Company complies with the Antitrust Laws: "Some of the most serious antitrust offenses occur between competitors, such as agreements to fix prices or to divide customers, territories or markets. Accordingly, it is important to avoid discussions with our competitors regarding pricing, terms and conditions, costs, marketing plans, customers and any other proprietary or confidential information." (*Chamberlain, supra,* No. 08–13451, Amended Compl. ¶ 87.)

3. Plaintiffs' Allegations Concerning the Structure of the Packaged Ice Industry

Packaged Ice, used primarily to cool beverages and food, is commonly sold in supermarkets, convenience stores, beverage stores, drug stores, gas stations and other retail outlets. (CAC ¶ 38.) Packaged Ice is a commodity product, made of frozen water and retail customers have little preference as to brands. There are no reasonable economic substitutes for Packaged Ice and the demand is stable and inelastic. (CAC ¶¶ 38–40.)

The CAC alleges that the current market structure differs from the historical pattern, in which Packaged Ice was produced and distributed by local and regional firms. The market now is dominated by the Defendants who control approximately two-thirds of the sales of Packaged Ice in the United States, with combined sales annually of more than $600 million dollars. (CAC ¶¶ 41–42.) The CAC alleges that Defendants "aggressively expanded" through acquisition of smaller local

and regional competitors. As a result of the Defendants' allocation of territories, "there is little or no overlap among the areas in which Reddy Ice, Arctic Glacier and Home City compete." (CAC ¶ 43.)

Reddy Ice is the largest manufacturer and distributor of Packaged Ice in the United States, "with sales in 31 states and the District of Columbia to over 80,000 ***1001** accounts," employing over 2,000 workers. "It sells approximately 1.9 million tons of ice per year, primarily packaged in seven and ten pound bags, sold principally to convenience stores and supermarkets. Reddy Ice had sales of $339 million in 2007 and holds the dominant position in the United States." (CAC ¶ 44.)

Arctic Glacier operates 37 manufacturing plants and distribution facilities, principally in the northeast, central and western United States, serving more than 70,000 retail accounts. Arctic Glacier is the second largest producer and distributor of Packaged Ice in the United States, with total revenues of $249 million in 2007. Arctic Glacier dominates the eastern seaboard cities such as New York and Philadelphia, as well as New England, California, and the Midwest. (CAC ¶ 45.)

Home City sells ice in Ohio, Indiana, Illinois, Kentucky and West Virginia as well as parts of Michigan, Pennsylvania, Tennessee, New York, and Maryland. Home City has 28 manufacturing plants, with 36 distribution centers and manufactures over 4,400 tons of ice per day. (CAC ¶ 47.)

As to the existence of barriers to entry, the CAC alleges: "There are substantial barriers that preclude or reduce the ability of competitors to enter into the production and distribution of Packaged Ice. An ice plant, equipment, and trucks needed to manufacture and deliver large quantities of Packaged Ice require millions of dollars in investment. Further, Defendants typically install refrigeration units at their customers' locations for dispensing ice to retail consumers. This creates an "installed base;" changing suppliers entails removing and replacing these units." (CAC ¶ 47.) Arctic Glacier has stated that while it services markets adjacent to markets served by the other Defendants, in general it does not compete directly with these companies.[9] (CAC ¶ 49.)

9 Similar statements are alleged to have been made by Reddy Ice in its public filings. "In the United States, the traditional packaged ice industry is led by us and three smaller, regional, multi-facility suppliers. Although these suppliers generally do not serve customers in our primary markets, we do compete with numerous smaller local and regional companies of varying sizes and competitive resources." (*Chamberlain, supra,* Dkt. No. 37, Amended Compl. ¶ 83, quoting Reddy Ice's Annual Report for the fiscal year 2005, filed with the Securities Exchange Commission on Form 10–K.)

The CAC alleges that: "Based upon publicly available data, beginning in or about January 1, 2001, the prices that customers have paid Defendants for Packaged Ice have increased at a rate that cannot be explained by the costs of manufacturing and distributing Packaged Ice to customers." (CAC ¶ 50.)

4. Allegations of Injury to the Class

The CAC alleges that Defendants' anticompetitive conduct has (1) restrained, suppressed or eliminated price competition with respect to Packaged Ice, (2) raised, fixed, maintained or stabilized the price of Packaged Ice at supra-competitive levels, and (3) has deprived direct purchasers of free and open competition in the Packaged Ice market. (CAC ¶ 56.) The Direct Purchaser Plaintiffs allege that they have been charged anticompetitive prices for Packaged Ice, resulting in damage to their business or property. (CAC ¶ 57.)

II. STANDARDS OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(6)

Fed.R.Civ.P. 12(b)(6) provides for the dismissal of a case where the complaint fails to state a claim upon which relief can be granted. When reviewing a motion to dismiss under Rule 12(b)(6), a court must ***1002** "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *DirecTV, Inc. v. Treesh,* 487 F.3d 471, 476 (6th Cir.2007). But the court "need not accept as true legal conclusions or unwarranted factual inferences." *Id.* (quoting *Gregory v. Shelby County,* 220 F.3d 433, 446 (6th Cir.2000)). "[L]egal conclusions masquerading as factual allegations will not suffice." *Eidson v. State of Tenn. Dep't of Children's Servs.,* 510 F.3d 631, 634 (6th Cir.2007).

In *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), the Supreme Court explained that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of

a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level...." *Id.* at 555, 127 S.Ct. 1955 (internal citations omitted). Dismissal is only appropriate if the plaintiff has failed to offer sufficient factual allegations that make the asserted claim plausible on its face. *Id.* at 570, 127 S.Ct. 1955. The Supreme Court clarified the concept of "plausibility" in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009):

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)]. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 556, 127 S.Ct. 1955. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).

Id. at 1948–50. A plaintiff's factual allegations, while "assumed to be true, must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief." *LULAC v. Bredesen*, 500 F.3d 523, 527 (6th Cir.2007) (citing *Twombly*, 127 S.Ct. at 1965). Thus, "[t]o state a valid claim, a complaint must contain either direct or inferential allegations respecting all the material elements to sustain recovery under some viable legal theory." *Bredesen*, 500 F.3d at 527 (citing *Twombly*, 127 S.Ct. at 1969).

In addition to the allegations and exhibits of the complaint, a court may consider "public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the [c]omplaint and are central to the claims contained therein." *Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir.2008) (citing *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir.2001)); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993) ("[A] court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document.") (citations omitted).

B. Federal Rule of Civil Procedure 12(b)(2)

[1] [2] [3] [4] Plaintiffs bear the burden of establishing that personal jurisdiction exists. *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir.2002). The Court has discretion to make a determination ***1003** as to the existence of personal jurisdiction without an evidentiary hearing but plaintiff must, by affidavit, set forth specific facts demonstrating that the court has jurisdiction. *Theunissen v. Matthews*, 935 F.2d 1454, 1458–1459 (6th Cir.1991). A court must consider the pleadings and affidavits submitted by the parties in the light most favorable to the plaintiff. *Id.* at 1458. Where there has been no evidentiary hearing, the plaintiff need only present a *prima facie* case in support of jurisdiction. *Id.* at 1458.

III. ANALYSIS

Plaintiffs claim that Defendants have violated Section 1 of the Sherman Act, which prohibits "any contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce." 15 U.S.C. § 1. Specifically, Plaintiffs claim that Defendants conspired among themselves to allocate markets and customers and agreed not to compete with each other, the effect of which has been to fix, raise, maintain or stabilize prices paid by direct purchasers of Packaged Ice. (CAC ¶ 1.) As evidence of unlawful conspiracy, Plaintiffs proffer evidence of the following: guilty pleas by some of the Defendants to criminal antitrust violations occurring in southeastern Michigan and suspension of key executives for violating corporate policy regarding antitrust compliance; DOJ Antitrust Division raids on corporate headquarters (of a non-Michigan Defendant) related to claimed anticompetitive conduct; allegations of nationwide collusion based upon insider admissions; investigations by state attorneys general into claims of anticompetitive conduct in the packaged ice industry; actions on the part of Defendants against economic self-interest; price increases not explained by increased costs; a market structure conducive to collusion; and opportunities to meet, facilitating conspiratorial conduct.

Defendants respond that Plaintiffs have not provided the Court with enough "factual content" to make an inference of conspiracy plausible, arguing that Plaintiffs have failed to identify the "who, what, where and when" of their claims and have alleged nothing more than legal conclusions and a "formulaic recitation" of the elements of a Sherman Act claim. Defendants argue that the allegedly illegal conduct is equally consistent with lawful activity and that an admitted

conspiracy by certain Defendants to violate the antitrust laws in one area of the country is not sufficient, in and of itself, to suggest a nationwide conspiracy. Finally, Arctic Glacier argues that certain of Plaintiffs' claims, i.e. those involving conduct that occurred before March, 2004, are barred by the statute of limitations and that the Court cannot exercise personal jurisdiction over certain of the Arctic Glacier Canadian Defendants. [10]

10 While Arctic Glacier and Reddy Ice have filed separate motions to dismiss, Plaintiffs responded to the motions jointly and the Court will analyze Defendants' arguments, which are largely similar and rely on substantially the same legal authority, collectively. Where Defendants' arguments diverge, or where otherwise necessary, the Court will so specify.

A. The Plausibility Analysis Under *Twombly*

The Supreme Court, in *Twombly*, specifically addressed the pleading requirements on a motion to dismiss in the context of a section 1 Sherman Act claim. To survive a motion to dismiss, the complaint must contain enough factual matter to "plausibly suggest" an agreement:

> Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a ***1004** reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.

550 U.S. at 556, 127 S.Ct. 1955. "[A] district court weighing a motion to dismiss asks 'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim.' " 550 U.S. at 563 n. 8, 127 S.Ct. 1955 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)).

Plaintiffs in *Twombly* alleged that the defendants conspired not to compete with one another in the local markets for high speed telephone and Internet services. Plaintiffs claimed that the local exchange carriers' decisions not to enter each other's markets was inconsistent with their individual economic self interest and therefore suggested a mutual agreement not to compete. The Supreme Court found, however, that the incumbent local exchange carriers, "ILECs" or "Baby Bells" (previously government-sanctioned regional service monopolies), who had been forced by the Telecommunications Act of 1966 to share their local networks with competitive long distance carriers ("CLECs"), had tremendous independent economic incentive to resist "sharing" and to forego entering one another's markets at the pain of being forced to subsidize a competing long distance carrier by sharing equipment. 550 U.S. at 566, 127 S.Ct. 1955. "[T]here was no need for joint encouragement to resist the 1966 Act ... each ILEC has reason to want to avoid dealing with CLECs and each ILEC would attempt to keep CLECs out, regardless of the actions of the other ILECs." The Supreme Court concluded that, without more, this independent economically self-motivated behavior was not enough to sustain a conspiracy claim. "The former Government-sanctioned monopolists were sitting tight, expecting their neighbors to do the same thing." 550 U.S. at 568, 127 S.Ct. 1955.

Apart from these allegations of parallel conduct, which were equally consistent with lawful behavior, plaintiffs' complaint contained no additional facts to suggest an illegal agreement. It was not simply the lawful explanation alone that defeated plaintiffs' claims in *Twombly*, but the absence of "any independent allegation of actual agreement among the ILECs." 550 U.S. at 564, 127 S.Ct. 1955. The "nub" of the complaint was parallel conduct and the suggestions raised by this behavior alone when "viewed in light of common economic experience." *Id.* There was nothing more to place the parallel conduct "in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." 550 U.S. at 557, 127 S.Ct. 1955. Thus, even if this Court were to conclude that Defendants' conduct was equally consistent with independent lawful activity, the Court must still inquire whether there are additional factual allegations which nonetheless "nudge[ ] [Plaintiffs'] claims across the line from conceivable to plausible." 550 U.S. at 570, 127 S.Ct. 1955. If the Court can discern some "factual enhancement" pointing toward, or suggesting a basis for inferring, an illegal agreement, the motion to dismiss must be denied. 550 U.S. at 556–557, 127 S.Ct. 1955.

In the instant case, the Court concludes that Plaintiffs have alleged that something more. Although Defendants dismiss each of the pieces of evidence offered as either "conclusory hearsay" or lacking the "who, what, when and where,"

Twombly does not require the latter nor does Plaintiffs' CAC contain only the former. Plaintiffs have offered sufficient factual content to "raise a reasonable expectation that discovery will reveal evidence of illegal agreement." ***1005** Even if ultimate proof of the facts may seem improbable to a "savvy judge," *Twombly* did not purport to place on a plaintiff alleging an antitrust conspiracy claim a summary judgment standard at the pleading stage.[11] *See In re Flat Panel Antitrust Litig.*, 599 F.Supp.2d 1179, 1184 (N.D.Cal.2009) ("Contrary to defendants' suggestion, neither *Twombly* nor the Court's prior order requires elaborate fact pleading.")

11 The Court notes that two weeks after issuing its opinion in *Twombly*, the Supreme Court issued another opinion discussing *Twombly* and the 12(b)(6) standards, and reaffirmed the significance of the time-worn notice pleading standard set forth in *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), a case which the Court was forced to distance itself from in *Twombly* in rejecting *Conley's* "no set of facts" language. 550 U.S. at 562–563, 127 S.Ct. 1955. *See Erickson v. Pardus*, 551 U.S. 89, 93, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (reversing the court of appeals' decision affirming the district court's grant of a motion to dismiss, citing *Twombly* and *Conley* and stating that plaintiff need not provide "specific facts" at the pleading stage and must only "give the defendant fair notice of what the ... claim is and the grounds upon which it rests").

1. *Twombly* does not require specific allegations of time, place or person.

Defendants argue that Plaintiffs' CAC must fail at the pleading stage because it lacks the "who, what, when and where" allegedly required by *Twombly*. (Reddy Ice Mot. 1, Br. 9–11; Arctic Glacier Mot. 14.) *Twombly* imposed no such requirement. The "time, place or person" language in *Twombly* appears in dicta, in a footnote, in the context of the Court's comment that, but for the complaint's allegations of parallel conduct, references to an agreement among the ILECs might not have given the notice required by Rule 8 because the complaint did not give the "specific time, place or person" involved in the alleged conspiracy. 550 U.S. at 564 n. 10, 127 S.Ct. 1955. The Court noted that if parallel conduct among all the ILECs had not been generally alleged, there would have been "no clue as to which of the four ILECs (much less which of their employees) supposedly agreed, or when and where the illicit agreement took place." *Id.* In such an instance, the Court hypothesized, "a defendant seeking to respond to plaintiffs' conclusory allegations in the § 1 context would have little idea where to begin." *Id.* In fact, the Court in *Twombly* expressly stated that it did "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." 550 U.S. at 570, 127 S.Ct. 1955. Stated differently, the Court's "concern [was] not that the allegations in the complaint were insufficiently 'particular[ized];' rather, the complaint warranted dismissal because it failed *in toto* to render plaintiffs' entitlement to relief plausible." *Id.* at 569 n. 14, 127 S.Ct. 1955 (internal citation omitted) (emphasis in original).

In *In re Southeastern Milk Antitrust Litig.*, 555 F.Supp.2d 934 (E.D.Tenn.2008), the court discussed the impact of *Twombly* on the pleading requirements in an antitrust conspiracy case and concluded that specifics as to who, what, when and where were not mandated by that decision:

> These complaints, while not answering all specific questions about "who, what, when and where," do put defendants on notice concerning the basic nature of their complaints against the defendants and the grounds upon which their claims exist. While viewing each of these factual allegations in isolation may lead one to the conclusion drawn by the defendants, i.e., that there is a legitimate business justification for each of the acts, a view of the complaint as a whole, ***1006** which this Court must take, and accepting all of the factual allegations as true, does support a plausible inference of a conspiracy or agreement made illegal under § 1 of the Sherman Act.
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> * * *
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> The complaints adequately state facts which address the questions of who, what, when, and where and give the Defendants seeking to respond to the allegations an idea where to begin. Although somewhat weak on allegations related to "when", the complaints plead sufficient facts to allow defendants to respond.

555 F.Supp.2d at 943–944. *See also Starr v. Sony BMG Music Entertainment*, 592 F.3d 314, 325 (2d Cir.2010) (rejecting defendants' argument that *Twombly* imposed an obligation to identify specifically the time, place and person as to each allegation of conspiracy); *In re Graphics Processing Units Antitrust Litig.*, 527 F.Supp.2d 1011, 1024 (N.D.Cal.2007) (confirming that plaintiffs need not plead "specific back-room meetings between specific actors at which specific decisions were made.").

The court in *Southeastern Milk* also expressly rejected defendants' attempts to read the allegations of the complaint

in isolation, finding defendants' "attempt to parse and dismember the complaints, contrary to the Supreme Court's admonition that '[t]he character and effect of a [Sherman Act] conspiracy are not to be judged by dismembering it and viewing its separate parts.' " *Id.* (quoting *Continental Ore Co. v. Union Carbide and Carbon Corp.*, 370 U.S. 690, 699, 82 S.Ct. 1404, 8 L.Ed.2d 777 (1962)). *See also In re Pressure Sensitive Labelstock Antitrust Litig.*, 566 F.Supp.2d 363, 373 (M.D.Pa.2008) (noting that nothing in *Twombly* "contemplates [a] 'dismemberment' approach to assessing the sufficiency of a complaint. Rather, a district court must consider the complaint in its entirety without isolating each allegation for individualized review.") *See also Standard Iron Works v. ArcelorMittal*, 639 F.Supp.2d 877, 902 (N.D.Ill.2009) ("Defendants' attempt to parse the complaint and argue that none of the allegations (i.e., quoted public statements, parallel capacity decisions, trade association and industry meetings) support a plausible inference of conspiracy-is contrary to the Supreme Court's admonition that '[t]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts.' ") (quoting *Continental Ore, supra*).

Defendants cite to a string of cases (*see* Reddy Ice Br. 8) that they allege support their contention that *Twombly* requires a plaintiff to plead the specifics of time, place and person. The Court finds these cases distinguishable in that none involved the level of factual content proffered in this case, i.e. government and internal investigations of the very corporate entities and individual executives involved on the same claims of conspiracy as well as guilty pleas by the Defendants and their executives to the same anticompetitive conduct in a significant market. For example, in *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1048 (9th Cir.2008), plaintiffs sued defendant credit card companies and banks alleging a conspiracy to set fees charged to merchants for credit card sales. The district court had previously dismissed plaintiffs' complaint and granted plaintiffs leave to conduct discovery and file an amended complaint, which plaintiffs did. *Id.* at 1046. Plaintiffs chose not to depose any representatives of the banks. *Id.* at 1046 n. 4. In its discussion of the allegations against the banks, the court noted, citing *Twombly*, that plaintiffs had utterly failed, even having been given a chance to conduct discovery, to answer the basic question of who did what to whom and where. *Id.* at 1048. The court found that plaintiffs offered no evidentiary facts as to ***1007** the banks individually beyond the collective legal conclusion that the "banks" knowingly participated in the alleged scheme. *Id.* at 1048. Without more factual content the "banks," which were large institutions with hundreds of employees, entering into contracts and agreements daily, would have no idea how to begin to respond to the allegations of a conspiracy. *Id.* at 1047. The court concluded that such allegations of parallel pricing behavior and "naked" assertions of conspiracy, stopped short of crossing the line between possibility and plausibility.

Similarly, in *In re Late Fee and Over–Limit Fee Litig.*, 528 F.Supp.2d 953 (N.D.Cal.2007), a case that involved allegations by credit card holders that defendants (who were most of the large credit card issuers in the United States) charged excessive late-fees, the complaint referred to the defendants only in collective terms. *Id.* at 956. The court held that stray statements, attributed to no one in particular, without any suggestion as to content or circumstances, failed to satisfy the *Twombly* plausibility requirement. *Id.* at 962. The court held that plaintiffs failed to place their allegations "in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." *Id.* at 963 (quoting *Twombly, supra* at 1966).

[5] Defendants continue to reiterate, and offer a host of cases in support of, the notion that "[i]n the wake of *Twombly*, allegations of parallel conduct and bare assertions of conspiracy no longer supply an adequate foundation to support a plausible § 1 claim." *In re Travel Agent Commission Antitrust Litig.*, 583 F.3d 896 (6th Cir.2009). The Court accepts this standard but notes that this is not a parallel conduct/bare assertion of conspiracy case. In the instant case, viewing the CAC in its entirety, there is sufficient factual content alleged to put the Plaintiffs' allegations in a context suggestive of a plausible conspiracy. Plaintiffs' allegations certainly put Defendants on notice, sufficient to form the basis for a response, as to who (the corporate players are clearly identified along with the names of several of their key high-level executives), what (agreements to stay out of each others territories, the details of which are alleged to be known by specific named individuals as well as by certain sufficiently identified confidential witnesses, and which are the subject of several ongoing government investigations and criminal guilty pleas), where (Cincinnati, Southeastern Michigan and other specifically referenced locations) and when (the time frames are identified in the CAC and are well known based on the plea agreements and the various ongoing criminal investigations). This additional factual content was lacking in *Twombly*. If the facts alleged give adequate notice to the parties of the claims and raise a reasonable expectation that discovery may lead to evidence of an illegal agreement,

more specific allegations as to person, place and time are not necessary. [12]

12 Reddy Ice argues that the Sixth Circuit's opinion in *In re Travel Agent, supra,* also requires Plaintiffs to allege specific time, person and place in their conspiracy claim. *See* Reddy Ice, Mot. 1, ¶ 2. *In re Travel Agent* imposes no such requirement. Indeed, the portion of the Sixth Circuit's opinion quoted by Reddy Ice, which refers to footnote 10 of the *Twombly* opinion, and the potential Rule 8 deficiencies of that complaint, is discussing the separate dismissals against four parties, two of whom were not even mentioned in the complaint and the other two mentioned only as having engaged in parallel conduct. 583 F.3d at 905. It was these ancillary defendants, whom plaintiffs attempted to capture with generalized claims as to "defendants" or "defendants' executives," not Continental and American, that the Sixth Circuit suggested would have "no clue" how to respond to the allegations of the complaint. There is no apt comparison to be made here, where the precise parties and their executives are implicated by name. *In re Travel Agent,* like *Twombly,* is a parallel conduct case, with only bare, collective assertions of conspiracy and nothing more. Unlike the instant case, there was no "setting" provided suggesting an agreement. Additionally, *In re Travel Agent* was an opt-out suit and the class litigation had already been decided in favor of defendants. The Sixth Circuit acknowledged in its opinion that "[o]nly the gravest of reasons should lead [a] court in [an] opt-out suit to come to a conclusion that departs from that in the class suit." 583 F.3d at 909 n. 8 (internal quotation marks and citation omitted). Despite the emphasis placed on this recent Sixth Circuit case by Defendants, the Court finds the case easily distinguished by the presence in the instant case of significant additional factual content, as discussed herein.

***1008 2. The facts as alleged raise a reasonable expectation that discovery will reveal evidence of illegal agreement and therefore satisfy the *Twombly* pleading standard.**

Defendants continue to sound the who, what, when and where refrain throughout their briefs and specifically challenge the sufficiency of the allegations of the CAC, claiming that the CAC does not give rise to a plausible suggestion of conspiracy because; (a) the Court cannot plausibly infer a conspiracy based upon government investigations, guilty pleas relating to conduct in southeastern Michigan, or the terminations and/or suspensions of key executives; (b) the proposed testimony of ex-employees does not support the plausibility of an illegal agreement; and (c) the market structure of the Packaged Ice industry supports their contention that the challenged conduct is equally as consistent with lawful activity as it is with an illegal agreement and that mere opportunities to conspire cannot sustain a Sherman Act § 1 claim.

a. The government investigations and guilty pleas of the various Defendants and their corporate executives support the plausibility of a nationwide conspiracy.

Arctic Glacier asserts, and Reddy Ice echoes the argument, that the guilty pleas of Arctic Glacier International, Home City, Keith Corbin, Gary Cooley, and Frank Larson to allocating customers and territories in southeastern Michigan and the Detroit, Michigan metropolitan area and the DOJ investigation of Reddy Ice and the suspension of its executive vice-president Ben Key, do not lend plausibility to Plaintiffs' claim of a nationwide conspiracy. (Arctic Glacier Br. 10–13; Reddy Ice Br. 16–17.)[13] Defendants rely in part on *In re Digital Music Antitrust Litig.,* 592 F.Supp.2d 435, 444 (S.D.N.Y.2008) for the proposition that a "mere investigation" does not make an antitrust conspiracy plausible. However, *In re Digital Music* was vacated and remanded in *Starr, supra,* the Second Circuit expressly indicating that the fact that defendants' price fixing scheme was the subject of a pending investigation by the New York State Attorney General, and two pending investigations by the DOJ, were factors which plausibly suggested ***1009** an illegal agreement. 592 F.3d at 324.

13 Reddy Ice argues additionally that the fact that the plea agreements do not involve Reddy Ice at all undercuts Plaintiffs' argument that Reddy Ice was part of a national conspiracy. (Reddy Ice Br. 16–17.) As acknowledged by Reddy Ice, it does not do business or sell Packaged Ice in the territories that are the subject of the guilty pleas. However, the very fact that Reddy Ice does not do business in Michigan, and that its executive vice-president Ben Key was suspended on the Company's own finding that "Mr. Key has likely violated Company policies and is associated with matters that are under investigation," certainly enhances the plausibility of the inference of illegal conduct beyond Southeastern Michigan. (Def.'s Ex. 1, June 24, 2010 Hearing, Reddy Ice Press Release.)

Defendants also rely on *Hinds County v. Wachovia Bank N.A.,* 620 F.Supp.2d 499 (S.D.N.Y.2009), which held that the averments in the plaintiffs' complaint relating to various government investigations into the municipal derivatives industry, "though suggestive, [were] too general to make

an antitrust claim plausible as to any specific Defendant other than BoA." 620 F.Supp.2d at 514. The court in *Hinds County*, however, ultimately permitted plaintiffs to amend their complaint and, on a subsequent motion to dismiss which the court denied, the court specifically held that the pending government investigations could be used to enhance the plausibility of plaintiffs' claims:

> In its plausibility analysis, the Court will also consider the SCAC in light of recent developments in state and federal investigations into the municipal derivatives industry. Although pending government investigations may not, standing alone, satisfy an antitrust plaintiff's pleading burden, government investigations may be used to bolster the plausibility of § 1 claims. *See Starr*, 592 F.3d at 324–25 (finding that investigations by New York State Attorney General and DOJ Antitrust into defendants' price-fixing support plausibility of § 1 claim); *see also Hyland v. Homeservices of America, Inc.*, No.3:05–CV–612–R, 2007 WL 2407233, at *3 (W.D.Ky. Aug. 17, 2007) (finding that DOJ enforcement actions supported § 1 price-fixing allegations); *In re Tableware Antitrust Litig.*, 363 F.Supp.2d 1203, 1205 (N.D.Cal.2005) ("A plaintiff may surely rely on governmental investigations, but must also ... undertake his own reasonable inquiry and frame his complaint with allegations of his own design.").

Hinds County, Mississippi v. Wachovia Bank N.A., 700 F.Supp.2d 378, 394–95 (S.D.N.Y.2010). *But see In re Graphics, supra*, 527 F.Supp.2d at 1024 (holding that subpoenas served on defendants and grand jury investigation carry no weight in pleading antitrust conspiracy where it is unknown whether investigation will result in indictments or nothing at all, also noting that a decision not to prosecute would not be binding on plaintiffs, and granting leave to amend). This Court finds that the government investigations surrounding the Packaged Ice industry, along with Reddy Ice's suspension of Ben Key, to which Plaintiffs' refer in the CAC, while not determinative standing alone as to the plausibility of Plaintiffs' claims of conspiracy, do bolster the plausibility analysis and heighten the Court's expectation that "discovery will reveal evidence of illegal agreement." *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955.

Defendants also contend that the guilty pleas of Arctic Glacier and Home City, and the guilty pleas of several high-level Arctic Glacier executives, Gary Cooley, Frank Larson and Keith Corbin, to a conspiracy to allocate customers and territories in southeastern Michigan, do not lend plausibility to Plaintiffs' claims of a nationwide conspiracy. This Court disagrees. In two cases involving the market for electronic memory (specifically the markets for Dynamic Random Access Memory ("DRAM") and the market for Static Random Access Memory ("SRAM")), *In re Flash Memory Antitrust Litig.*, 643 F.Supp.2d 1133 (N.D.Cal.2009) and *In re Static Random Access Memory (SRAM) Litig.*, 580 F.Supp.2d 896 (N.D.Cal.2008), courts held that evidence of guilty pleas in markets not directly involved in the claims before them supported a reasonable inference of conspiratorial behavior in the markets in the cases before them. Recognizing the general principle that "evidence concerning a prior conspiracy may be relevant and admissible to show the background and ***1010** development of a current conspiracy" the court in *Flash Memory* stated:

> Defendants ignore the above authority, and instead, focus on the fact that the employees who pleaded guilty to price fixing in the DRAM investigation worked for only two of the Defendant companies. While that may be so, the Court notes that the two companies involved, Samsung and Hynix, collectively controlled the majority of the flash memory market and together paid fines approaching half a billion dollars. In addition, at least seven of the employees involved are alleged to have had responsibility for NAND flash memory pricing, sales, marketing and operations in the United States. Given these employees' overlapping involvement in controlling DRAM and flash memory pricing, coupled with the significant market power wielded by their employers, it is reasonable to infer that their involvement in the DRAM conspiracy had at least some connection to the alleged conspiracy in this case.

643 F.Supp.2d at 1149 (citations to the record omitted). Similarly, the court in *SRAM* held that guilty pleas in the *DRAM* litigation supported an inference of conspiracy in the SRAM industry: "Plaintiffs allege that the same actors associated with certain Defendants were responsible for marketing both SRAM and DRAM. Although the allegations are not sufficient to support Plaintiffs' claims standing on their own, they do support an inference of a conspiracy in

the SRAM industry." 580 F.Supp.2d at 903. *See also In re Air Cargo Shipping Services Antitrust Litig.*, MDL No. 1775, 2009 WL 3443405 at *1 (E.D.N.Y. Aug. 21, 2009) (reversing the magistrate judge's opinion (which Arctic Glacier relied on in its brief at p. 12) and holding that "admissions of price-fixing by so many of the defendants certainly 'are suggestive enough to render a § 1 conspiracy claim plausible.' ") (quoting *Twombly, supra* at 556, 127 S.Ct. 1955).

[6] The Court finds the cases cited by Defendants distinguishable. In *In re Elevator Antitrust Litig.*, 502 F.3d 47, 52 (2nd Cir.2007), the court found that plaintiffs had offered "an insufficient factual basis" for inferring a worldwide conspiracy based upon apparent (not proven) misconduct in Europe. 502 F.3d at 52. The court found that there was no evidence linking the conduct alleged to have occurred in Europe to the United States, in particular no indication that the two markets were even responsive to one another on price and "no allegations of the actual pricing of elevators or maintenance services in the United States or changes therein attributable to defendants' alleged misconduct." *Id.* The court did not hold that such a theory could never be viable, only that it hadn't been sufficiently alleged: "Without adequate allegation of facts linking transactions in Europe to transactions and effects here, plaintiffs' conclusory allegations do not "nudge [their] claims across the line from conceivable to plausible." " *Id.* (quoting *Twombly, supra.*) Plaintiffs in the instant case are not reaching across the ocean to unproven allegations in an unknown market—they are pointing to an admitted conspiracy in a neighboring state. *See also In re Chocolate Confectionary Antitrust Litig.*, 602 F.Supp.2d 538, 576–577 (M.D.Pa.2009) (distinguishing *In re Elevator* and holding that "Defendants' alleged [anticompetitive] conduct in Canada enhances the plausibility of the alleged U.S. price-fixing conspiracy.").

In re Parcel Tanker Shipping Servs. Antitrust Litig., 541 F.Supp.2d 487, 492 (D.Conn.2008), also cited by Arctic Glacier, is distinguished by the fact that plaintiffs attempted to introduce evidence of guilty pleas as to a conspiracy to unlawfully raise prices (on a different trade route) as proof of a conspiracy to unlawfully lower prices, ***1011** i.e. predatory pricing. The court found that the suggested inference did not, therefore, tend to enhance the plausibility of plaintiffs' claim: "in the context of a predatory pricing claim, 'a conspiracy to increase profits in one market does not tend to show a conspiracy to sustain losses in another.' " 541 F.Supp.2d at 492 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 596, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). This is not a predatory pricing case and Plaintiffs are not attempting cross-fertilize by utilizing guilty pleas as to one type of prohibited conduct as proof of a different type of unlawful behavior.

Finally, the Court distinguishes *In re Hawaiian & Guamanian Cabotage Antitrust Litig.*, 647 F.Supp.2d 1250 (W.D.Wash.2009), where the court rejected plaintiffs' proffer of guilty pleas relating to conduct on an entirely different trade route by certain individuals, only one of whom was involved in the litigation before the court. Declining plaintiffs' suggestion that the case before the court was analogous to the *SRAM* litigation discussed above, the court stated: "The cases on which plaintiffs primarily rely do not support a different view because those cases involved defendants with overlapping involvement in different markets, a factual scenario that plaintiffs in this case have not pleaded." 647 F.Supp.2d at 1259

Thus, under certain circumstances, the "if there, then here" argument certainly can have merit. Particularly where, as here, there is a significant overlap in identity of interest of the alleged co-conspirators in both markets (the corporate actors are the same and all of the individual defendants who pled guilty to anticompetitive conduct in southeastern Michigan are high-level key executives with nationwide, not local, corporate responsibilities) and where the claims are based upon the same anticompetitive conduct, i.e. customer and market allocation, the guilty pleas in one market are suggestive of the plausibility of a conspiracy to commit the same illegal acts in another market. As with the related government investigations, standing alone the guilty pleas relating to conduct in southeastern Michigan might not enhance the plausibility analysis. But taken as part of the larger picture, and considering the parallel internal investigations that have resulted in the suspension of key executives, these guilty pleas do enhance the expectation that discovery might lead to evidence of a nationwide illegal agreement among these same actors, one of whom is under active government investigation and admittedly does not sell product in southeastern Michigan. [14]

14 The Court also notes that Home City, in its proposed settlement agreement with Plaintiffs in the instant case, agrees to settlement with Plaintiffs who "consist of a class of direct purchasers of Packaged Ice throughout the United States," and further agrees to assist Plaintiffs in the prosecution of its *nationwide* conspiracy claim. Additionally, Plaintiffs allege that Keith Corbin of Arctic

> Glacier admitted to Mr. McNulty "that Arctic Glacier had agreed with both Home City and Reddy Ice to geographically divide the United States market for the sale and delivery of Packaged Ice, in order to keep prices high in their respective territories." (CAC ¶ 25). Evidence of this larger, nationwide conspiracy is also alleged, in the *Chamberlain* Complaint, to have been perceived by numerous confidential witnesses. (*Chamberlain, supra*, No. 08–13451, Amended Compl. ¶¶ 55–60.)

Nor can this civil litigation be circumscribed or defined by the boundaries of the criminal investigations or plea agreements. In *Starr, supra* the Second Circuit rejected defendants' argument that inferring a conspiracy based upon the DOJ investigations was unreasonable because the DOJ allegedly had closed its inquiry and publicly announced that it had uncovered no evidence of competitive harm. 592 F.3d at 325. The Court noted that even if it could ***1012** consider this evidence on a motion to dismiss, there was no case cited "to support the proposition that a civil antitrust complaint must be dismissed because an investigation undertaken by the Department of Justice found no evidence of conspiracy." *Id.* Furthermore, the court noted, defendants' argument neglected the fact that the DOJ had launched two new investigations into whether defendants engaged in anticompetitive conduct and whether they misled the DOJ. *Id. See also In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 664–665 (7th Cir.2002) (refusing to infer lack of a civil conspiracy from the government's decision not to move against certain defendants, acknowledging that the DOJ may decide to limit the scope of an investigation for numerous reasons, including differing standards of proof in a criminal case and the knowledge that the private bar "had both the desire and the resources to prosecute [the] suit"); *In re Vitamins Litig.*, No. 99–misc–197, 2000 WL 1475705 at *11 (D.D.C. May 9, 2000) (rejecting the "notion that the guilty pleas and cooperation agreements and the class settlement foreclose a broader conspiracy. Guilty pleas are negotiated instruments which take into account not only the culpability of the accused but the Justice Department's resources and other cases requiring the government's attention."); *In re Polypropylene Carpet Antitrust Litig.*, 178 F.R.D. 603, 620 (N.D.Ga.1997) ("[T]he court is aware of no authority that requires a civil antitrust plaintiff to plead only the facts of a prior criminal indictment. To the contrary, several cases flatly reject that theory.")

As this Court noted in its prior Order Accepting Submissions of Southern District of Ohio Transcript Excerpts of February 11 and March 2, 2010 from Parallel Criminal Proceedings (Dkt. No. 250), the DOJ investigation in this case has not closed and the Court gives no weight to the government's statements regarding evidence that may or may not have yet been discovered on the issue of a nationwide conspiracy in their criminal investigation. As the government stated in the March hearing, they "take no position as to whatever evidence exists in the civil case ... the issue is just this case and the scope of the conspiracy that has been set forth in the pre-sentence investigation." (Resp. to Mot. for Leave to File Excerpts of Hr'g, Dkt. No. 245, Ex. 2, Tr. of March 2, 2010 Hr'g p. 3–4.) The Court accepts that there are a multitude of reasons why the government in a criminal investigation may limit or curtail its investigation, including the possibility that civil enforcement will step in where it decides, or is compelled, to conclude. In the instant case, the DOJ criminal investigation is continuing.

b. The alleged expected testimony of Defendants' former employees supports the plausibility of a nationwide agreement to allocate customers and markets.

Plaintiffs allege in paragraph 25 of the CAC that Keith Corbin, an Arctic Glacier executive who has pled guilty to violating the antitrust laws, told Mr. McNulty "that Arctic Glacier had agreed with both Home City and Reddy ice to geographically divide the United States market for the sale and delivery of Packaged Ice, in order to keep prices high in their respective territories."[15] Mr. McNulty's testimony is supported ***1013** in great detail by the alleged expected testimony of several confidential witnesses, identified by the positions they held in the Defendant companies, in the complaint filed in the related securities fraud case, *Chamberlain, supra,* No. 08–13451, (Dkt. No. 37, Amended Compl. ¶¶ 45–57). For example, the *Chamberlain* complaint alleges that:

15 The Court rejects Defendants' attempt to attach significance to the fact that some of the allegations in CAC are based on alleged hearsay. This Court must accept all factual allegations in the CAC as true. "Whether the allegations in the complaint are based on hearsay is not relevant to a motion under Rule 12(b)(6) or 12(c)." *Polar Molecular Corp. v. Amway Corp.*, No. 07–460, 2007 WL 3473112 at *4 (W.D.Mich. Nov. 14, 2007).

> Confidential Witness 1 ("CW1") is a former Reddy Ice employee who held the position of National Purchasing and Contracts Manager for Reddy Ice from mid–1997 through late–2004. CW1 was based out of the Company's Dallas, Texas headquarters. During CW1's tenure at

Reddy Ice, CW1 became aware of the unlawful market allocation agreement between Reddy Ice and Arctic Glacier. According to CW1, the Agreement was entered into during CW1's employment at Reddy Ice. CW1 further stated that it was discussed in the presence of CW1 and other employees at Reddy Ice's Dallas headquarters that Reddy Ice had agreed to not compete against Arctic Glacier in California, and that Arctic Glacier in exchange had [sic] for the exclusive right to service California had agreed to "stay out" of Arizona.

And further in the *Chamberlain* complaint:

> During the execution of CW2's duties, CW2 learned of an unlawful agreement between Reddy Ice and Arctic Glacier to allocate territories and markets for packaged ice for exclusive distribution and sales of packaged ice. CW2 stated that this collusive agreement was often discussed in CW2's presence among Reddy Ice employees at the corporate office and at the various plants that CW2 visited while conducting audits. In addition, CW2 was personally told of the unlawful agreement by defendant Weaver.
>
> According to CW2, defendant Brick had a connection at Arctic Glacier and had used this connection to approach the CEO of Arctic Glacier. As told to CW2 by other Reddy Ice employees with whom CW2 came into contact during the course of internal audits, defendant Brick entered into the on-going unlawful agreement with Arctic Glacier to allocate territories and markets for packaged ice whereby Reddy Ice agreed to stay out of California and Arctic Glacier agreed to stay out of Arizona.
>
> > Additionally, it was also regularly discussed amongst various Reddy Ice employees that Home City was a party to the unlawful agreement, according to CW2. CW2 stated that Reddy Ice employees mentioned that Home City was represented at the meeting during which defendant Brick and Arctic Glacier's Chief Executive Officer met to divvy up the California and Arizona markets. With respect to Home City, CW2 was told by other Reddy Ice employees that Reddy Ice and Arctic Glacier had agreed to stay out of certain Mid–West states where Home City had a presence. During the course of CW2's employment, CW2 also gained first-hand knowledge that defendants Weaver and Janusek knew of the unlawful allocation agreement with Home City.

Chamberlain, supra, Amended Compl. ¶¶ 48, 49, 52.

Mr. McNulty, and the confidential witnesses referred to in the *Chamberlain* complaint, are sufficiently identified that this Court must take their averments as true, and must "accept[ ] that the Confidential Witness would possess the information alleged for the purposes of this motion to dismiss." *Hinds County, supra,* 700 F.Supp.2d 378, 396 n. 5. "Plaintiffs are not required to plead exact job titles, describe the sources' responsibilities and duties in detail or allege access to specific company documents." *In re Atlas Air Worldwide* ***1014** *Holdings, Inc. Securities Litigation,* 324 F.Supp.2d 474, 493 (S.D.N.Y.2004). *See also In re Aftermarket Filters Antitrust Litig.,* No. 08–4883, MDL 1957, 2009 WL 3754041 at *3 (N.D.Ill. Nov. 5, 2009) (distinguishing *Twombly* based upon the allegations of eyewitness accounts of price fixing discussions).

[7] The Court concludes that the anticipated testimony of Mr. McNulty, Mr. Corbin and of the numerous confidential witnesses identified in the *Chamberlain* complaint, taken as true, supports the plausibility of a nationwide conspiracy among the Defendants to allocate markets in violation of the Sherman Act. This is all that is required at the pleading stage and satisfies all that is mandated by *Twombly.*

c. The Packaged Ice Industry market structure plausibly suggests collusive behavior and Defendants' conduct, even if accepted as consistent with independent, lawful market behavior, must be viewed in the context of the multiple additional factual allegations of Plaintiffs' Complaint which, when viewed as a whole, plausibly suggest an illegal conspiracy to allocate customers nationwide.

[8] Allegations that a market is characterized by economic factors that courts and antitrust experts and economists have found are conducive to collusive behavior, support an inference of plausibility. *Standard Iron Works, supra* 639 F.Supp.2d at 883. *See also In re Chocolate Confectionary Antitrust Litig.,* 602 F.Supp.2d 538, 576 (M.D.Pa.2009) ("For example, a plaintiff may aver that the relevant market is ripe for collusion due to the presence of oligarchic sellers, diffuse buyers, prohibitive entry barriers, and standardized products."); *Aftermarket Filters, supra,* 2009 WL 3754041 at *3 (finding that allegations of market concentration, market maturity, fungibility of products, lack of brand loyalty and the importance of price buttressed the plausibility of a conspiracy theory).

According to the allegations of the CAC, Reddy Ice is the largest manufacturer and distributor of Packaged Ice in the United States with sales in 31 states and the District of Columbia. (CAC ¶ 44.) Arctic Glacier operates 37 manufacturing plants and distribution facilities principally in the northeast, central and western United States. (CAC ¶ 45.) Arctic Glacier dominates the major eastern seaboard cities like New York and Philadelphia and operates also in New England, California and the Midwest. (*Id.*) Home City sells Packaged Ice across Ohio, Indiana, Illinois, Kentucky and West Virginia, as well as parts of Michigan and Pennsylvania. (CAC ¶ 46.) The Defendants together control approximately two-thirds of the sales of Packaged Ice in the United States. (CAC ¶ 42.)

Plaintiffs allege in the CAC that Packaged Ice is a commodity product, there are no reasonable economic substitutes for Packaged Ice, the demand is stable and inelastic and customers have little preference as to brands. (CAC ¶ ¶ 39–40.) Plaintiffs further allege that the Packaged Ice industry is characterized by "substantial barriers [to entry] that preclude or reduce the ability of competitors to enter into the production and distribution of Packaged Ice." (CAC ¶ 47.) Millions of dollars of investment are required to establish an ice plant, purchase equipment and trucks needed to manufacture and distribute large quantities of ice. Additionally, producers typically install refrigeration units at their customers' locations for storing and dispensing ice to retail consumers, creating an "installed base" which further inhibits the customers' ability and desire to change suppliers. (*Id.*)

***1015** Plaintiffs allege that Packaged Ice historically "was produced and distributed by local and regional firms" and that "Defendants' have fundamentally changed the nature of that market" by "reducing the ability of other Packaged Ice companies to compete for customers serviced by Defendants." (CAC ¶ 41.) Plaintiffs allege that Defendants have increased and maintained their market power by aggressively expanding and acquiring numerous smaller local and regional manufacturers but allocating territories and agreeing to stay out of each others' way so that there is little or no overlap in the areas which they serve. (CAC ¶ 43.) [16]

16 These allegations are buttressed by similar, and more specific allegations, in the related *Chamberlain* complaint, No. 08–13451, at ¶ ¶ 58–60.

Defendants argue that Plaintiffs' allegations regarding the nature of the Packaged Ice industry describe conduct on the part of the Defendants that is completely consistent with lawful business conduct. (Arctic Glacier Br. 7–9; Reddy Ice Br. 11–15.) Both Defendants argue that, under *Twombly*, a complaint that contains allegations of conspiracy that are equally consistent with lawful independent conduct fails to properly plead antitrust conspiracy and must be dismissed. Both Arctic Glacier and Reddy Ice also rely on *United States v. Colgate*, 250 U.S. 300, 307, 39 S.Ct. 465, 63 L.Ed. 992 (1919), for the proposition that a manufacturer has the right to choose to deal, or refuse to deal, with whomever it likes, as long as it does so independently.

Defendants argue that the barriers to entry and installed base facts pled by Plaintiffs explain why a Packaged Ice manufacturer could legitimately decide not to enter its competitor's territory and to operate instead within its own geographic footprint for lawful reasons based solely on economic self-interest. Thus, Arctic Glacier concludes, the fact "that Defendants are not present in the same geographic areas, without some non-conclusory allegation that their lack of overlap is due to an agreement, does not withstand *Twombly*. (Arctic Glacier Br. 9.) Similarly, Reddy Ice concludes that "Plaintiffs' own allegations concerning the packaged ice industry, taken as true, suggest that the Defendants are simply acting lawfully and in their own economic self-interest in refraining from aggressively expanding outside their respective geographic footprints." (Reddy Ice Br. 12.) Reddy Ice further argues that because a manufacturer can only cost-effectively deliver ice only within a 50 to 100 mile radius of its distribution site, it would be cost prohibitive for Reddy, with most of its plants in the south, to try to sell Packaged Ice from these plants to customers in the Northeast, where Arctic Glacier has a strong presence. Reddy Ice argues that therefore its decision to withdraw from certain markets that were then served by one of the other Defendants is not evidence of antitrust conspiracy but is explained by independent business decision making. (Reddy Ice Br. 14.) Reddy Ice concludes that because of the necessity of proximity to one's manufacturing base, markets for Packaged Ice are regional, not national and that "a unilateral decision by Reddy to grow within its footprint rather than aggressively expand its footprint makes economic sense." (Reddy Ice Br. 15.)

Plaintiffs respond that Defendants' argument that their conduct is equally consistent with lawful conduct ignores the critical fact that "an admitted participant in a packaged ice antitrust conspiracy says that all three Defendants agreed not to compete with each other nationwide, which, in light

of the fact that they could have, but did not, certainly renders a national conspiracy plausible." (Pls.' Resp. ***1016** 12.) Plaintiffs are correct that, as *Twombly* instructed, the allegations which Defendants claim are entirely consistent with independent action must be placed in context, and if that context suggests a preceding agreement, a lawful explanation alone will not defeat the claim of conspiracy on a motion to dismiss. *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955 (the challenged conduct "must be placed in the context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action.") In *Twombly* there were no additional facts to support the context suggesting a preceding agreement. Here, as discussed extensively above in section IIIA1, 2, such allegations have been made.

Additionally, Plaintiffs argue that several of the actions undertaken by Defendants to exit certain areas which they previously served and to allow another co-conspirator unfettered access to that region, free of competition, are against economic self-interest and cannot be explained other than by the existence of an illegal agreement to allocate territories. Plaintiffs argue that these rival companies have historically grown through acquisition of small, local companies with existing facilities and reject Defendants' argument that staying within their respective geographic made good business sense based on the nature of the product and the industry. Where plaintiffs allege "behavior that would plausibly contravene each defendant's self-interest 'in the absence of similar behavior by rivals,' " a § 1 claim is stated under *Twombly*. *Starr, supra* at 327 (citing 7 Areeda & Hovenkamp § 1415a (2d ed. 2003)). *See also Standard Iron Works, supra* 639 F.Supp.2d at 896 ("Defendant's actions against self-interest constitute "widely recognized plus factor[ ]" suggestive of concerted action.") (internal quotation marks and citation omitted).

For example, Plaintiffs allege, Reddy had a significant presence in California, which it stated publicly was a significant and lucrative market. (CAC ¶ 29.) Arctic Glacier had no presence in California but moved into and began to dominate the California market after Reddy Ice's unexplained decision to leave that market. (CAC ¶ 45.) *See also Chamberlain,* Compl. ¶¶ 55–60, detailing the background of Reddy Ice's departure from the California market and Arctic Glacier's entry into that same market. Plaintiffs claim that in the absence of an agreement of quid pro quo, Reddy Ice's decision to leave California, where it already had plants, trucks and distribution facilities, was against its economic self interest. (Arctic Glacier Br. 14.) Plaintiffs also argue, as an example of behavior against economic self interest, that Arctic Glacier's decision to withdraw from competing in Oklahoma and New Mexico, even though it had manufacturing facilities in neighboring states, allowing Reddy Ice to sell in those states free of competition, would have contravened its self-interest in the absence of similar accommodating behavior by Reddy Ice. (CAC ¶ 30.) Plaintiffs further point out that Reddy Ice's argument that it was cost-prohibitive to service markets in the northeast when they were heavily invested the South ignores the fact that nothing prevented Reddy Ice from purchasing an existing company outside their geographic footprint, given that growth by acquisition was their business modus operandi, and servicing an area from that established base. (Pls.'s Resp. 13.)

[9] It is not Plaintiffs' burden at the pleading stage to "rule out the possibility that the defendants were acting independently" but only to allege "enough factual matter (taken as true) to suggest that an agreement was made." *Starr, supra* 592 F.3d at 321 (citing ***1017** *Twombly* 550 U.S. at 554, 556, 127 S.Ct. 1955.) As the court noted in *Standard Iron Works, supra,* 639 F.Supp.2d at 895, "[w]hile more innocent inferences can be drawn from [Defendants' conduct] it is not Plaintiffs' burden to allege facts that cannot be squared with the possibility of unilateral action. *Fructose,* 295 F.3d at 663." Whether Defendants' actions were "benign unilateral business decisions made by the individual Defendants or whether they represent concerted effort in violation of the Sherman Act are issues of fact which [this Court] cannot decide on the pleadings and which require discovery prior to resolution." *Standard Iron Works, supra,* 639 F.Supp.2d at 902. This Court concludes that Plaintiffs have plausibly alleged, in non-conclusory terms, that the "lack of market overlap" is due to an illegal agreement and have placed the allegations of conspiratorial behavior in a context that undermines Defendants' claims of lawful independent action, thereby stating a claim under *Twombly.*

d. Allegations of opportunities to collude bolster the plausibility analysis.

[10] Defendants correctly argue that "mere opportunity" to conspire, without more, cannot form the basis of a claim of conspiracy. *In re Graphics, supra* 527 F.Supp.2d at 1023; *In re Travel Agent, supra* 583 F.3d at 911. This Court is cognizant of the fact that membership in IPIA, the dominant Packaged Ice trade association, and the fact that several of Defendants' key executives who have pled guilty to antitrust

violations served as board and committee members in that organization, standing alone, do not suffice to support a claim of conspiracy. However, these allegations do not stand alone and must be viewed not in isolation but in the context of the entirety of Plaintiffs' allegations. *See* Standard Iron Works, supra, 639 F.Supp.2d at 897 ("Proof of Defendants' opportunity to conspire does not alone suggest that there was an agreement to curtail production. But Plaintiffs' allegations go further than pointing to opportunity alone.") (citation omitted). When viewed in the context of the allegations of the CAC as a whole, these "opportunities" bolster the plausibility of a conspiracy and "attendance at said meetings should be easily ascertained through discovery such that there is a reasonable expectation that discovery may reveal evidence of the alleged illegal conspiracy." *In re Flat Glass Antitrust Litig. II*, No. 08–mc–180, MDL 1942, 2009 WL 331361 at *3 (W.D.Pa. Feb. 11, 2009).

Plaintiffs' CAC contains enough factual content to plausibly suggest that these Defendants participated in a nationwide conspiracy to allocate customers and territories and raises a reasonable expectation that discovery will reveal evidence of illegal agreement. The CAC provides Defendants with fair notice of Plaintiffs' claims and the grounds on which they are based, such that these Defendants will know how to respond. "The present complaint succeeds where *Twombly's* failed because the complaint alleges specific facts sufficient to plausibly suggest that the parallel conduct alleged was the result of an agreement among the defendants." *Starr, supra* 592 F.3d at 323. Whether Plaintiffs will ultimately prevail on their claims is a question reserved for a later day. Because Plaintiffs have "nudge[d] their claims across the line from conceivable to plausible," Defendants' motions to dismiss for failure to state a claim are denied.

B. Fraudulent Concealment/Statute of Limitations.

Plaintiffs purport to represent a class whose members purchased Packaged Ice between January 1, 2001 through March 6, 2008. Arctic Glacier argues that Plaintiffs' claims are barred in part by the Sherman ***1018** Act four-year statute of limitations. *See* 15 U.S.C. § 15(b). Defendants state that the CAC was filed in March 2008 and that any violations that allegedly occurred before March 2004 are not actionable. Plaintiffs respond that Arctic Glacier and Home City pled guilty to a conspiracy that began in January, 2001 and that Plaintiffs should be able to assert claims covering that same period. Plaintiffs argue that the four-year statute of limitations should be tolled, and the class allegations permitted to reach back to conduct in 2001, because the Defendants affirmatively concealed their anticompetitive conduct.

[11] "In order to establish equitable tolling by the doctrine of fraudulent concealment, the plaintiffs must allege and establish that: 1) defendants concealed the conduct that constitutes the cause of action; 2) defendants' concealment prevented plaintiffs from discovering the cause of action within the limitations period; and 3) until discovery, plaintiffs exercised due diligence in trying to find out about the cause of action." *Egerer v. Woodland Realty, Inc.*, 556 F.3d 415, 422 (6th Cir.2009) (quoting *Pinney Dock & Transp. Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1465 (6th Cir.1988)). The doctrine of fraudulent concealment, as developed in the Sixth Circuit, requires proof of affirmative acts of concealment. "Mere silence, or one's unwillingness to divulge one's allegedly wrongful activities, is not sufficient." *Pinney, supra* at 1472. [17]

17 The Court agrees with Defendants that Plaintiffs' reliance on *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517 (6th Cir.2008) is overemphasized. The Sixth Circuit did not rule that instructing the jury that "conspiracy, by its nature, is self-concealing" is appropriate in a fraudulent concealment claim in a conspiracy case. Rather, as Defendants point out, the court merely held that on the facts of that case, the instruction was harmless error. *Id.* at 538.

Plaintiffs' allegations of fraudulent concealment are not extensive. They claim that "Defendants affirmatively concealed their anti-competitive conduct from Plaintiffs ... represented publicly, both to customers and otherwise, that their pricing activities were unilateral, rather than collusive, and based upon legitimate business purposes, such as increased costs. In making those false representations, Defendants misled Plaintiffs and members of the Class as to the true, collusive, and coordinated nature of their territorial and customer allocation and other illegal anticompetitive activities ... Defendants' wrongful conduct was carried out in part through means and methods that were designed to avoid detection, and which, in fact, successfully precluded detection." (CAC ¶¶ 58–61.) Plaintiffs further allege that they "did not and could not have discovered Defendants' unlawful contract, combination or conspiracy at any earlier date. Defendants undertook affirmative acts of concealment of their contract, combination or conspiracy, including their attendance at secret meetings, and engaging in secret conversations concerning the allocation of markets and customers for Packaged Ice." (CAC 162.)

[12] [13] At first blush, this rather conclusory allegation appears to run afoul of the *Pinney* prohibition against a finding of fraudulent concealment based upon defendants' failure to "divulge [their] allegedly wrongful activities." However, it is also true that "where there is a dispute as to the issue of fraudulent concealment, the question is one for the jury." *Dry Cleaning & Laundry Institute of Detroit, Inc. v. Flom's Corp.*, 841 F.Supp. 212, 216 (E.D.Mich.1993). There may be merit to Plaintiffs' generalized allegation that Defendants "represented publicly, both to customers and otherwise, that their pricing activities were unilateral, rather than collusive, ***1019** and based upon legitimate business purposes, such as increased costs." For example, in the related securities fraud case, *Chamberlain, supra,* plaintiffs allege numerous public disclosures by Reddy Ice affirmatively representing that they comply with company's code of business ethics and specifically that they comply with the federal antitrust laws. (*Chamberlain,* No. 08–13451, Dkt. No. 37, Amended Compl. ¶ 87.) Given the scope of the conspiracy to which Home City and Arctic Glacier have pled in the criminal case (clearly embracing the entire period from 2001–2007), taking as true the allegations in the CAC relating to affirmative acts of public disclosure on the part of at least some of the Defendants of compliance with the very laws they have now admitted to violating, and the fact that fraudulent concealment is a question best left to the jury if there is any question, the Court finds that under the pleading standard set forth in *Twombly,* Plaintiffs' claims of fraudulent concealment plausibly allege affirmative acts of concealment which satisfy the *Twombly, Iqbal* requirements.

C. The Court Will Defer Decision on Arctic Glacier's Motion to Dismiss the Canadian Entities for Lack of Personal Jurisdiction

[14] [15] Plaintiffs bear the burden of establishing that personal jurisdiction exists. *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir.2002). However, "a plaintiff is only required to meet this burden when challenged by a motion under Rule 12(b)(2), which the moving defendant supports by attaching affidavits." *Hagen v. U–Haul Co.*, 613 F.Supp.2d 986, 1001 (W.D.Tenn.2009) (citing *Weller v. Cromwell Oil Co.*, 504 F.2d 927, 929–30 (6th Cir.1974)). "The Court has discretion to make a determination as to the existence of personal jurisdiction without an evidentiary hearing." *Theunissen v. Matthews*, 935 F.2d 1454, 1458–1459 (6th Cir.1991). Where there has been no evidentiary hearing, the plaintiff need only present a *prima facie* case in support of jurisdiction. *Id.* at 1458.

In the instant case, Arctic Glacier has not submitted any facts, by way of affidavit, which challenge Plaintiffs' factual allegations. Therefore, the Court can properly rely on Plaintiffs' pleadings to resolve the 12(b)(2) motion. *See Hagen, supra,* 613 F.Supp.2d at 1002 ("[W]hen the defendant fails to attach supporting affidavits, as in this case, a Rule 12(b)(2) motion cannot be sustained because the Court will have been presented with no evidence contradicting the plaintiff's assertion of jurisdiction over the defendant."). Plaintiffs allege that the Canadian Arctic Glacier Defendants have extensive United States business operations and the Court notes that "the ownership of a subsidiary that does business in the forum is a factor to be considered in determining minimum contacts." *General Motors Corp.*, 948 F.Supp. 656, 665 (E.D.Mich.1996) (citing *Third Nat'l Bank v. WEDGE Grp., Inc.*, 882 F.2d 1087, 1090 n. 1 (6th Cir.1989)).

At the hearing on June 24, 2010, counsel for Arctic Glacier indicated to the Court that Arctic Glacier was agreeable to the Court's deferring decision on the issue of personal jurisdiction, as it did in the *McNulty* case (Dkt. No. 84, 5/29/09, Opinion and Order Granting in Part and Denying in Part Defendants' Motion to Dismiss, 7–8), until Plaintiffs have had an opportunity to conduct jurisdictional discovery.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Defendants' motions to dismiss (Dkt. Nos. 202 and 203).

IT IS SO ORDERED.

Parallel Citations

2010-2 Trade Cases P 77,282

End of Document

Attachment 3

Withheld

Attachment 4

Withheld

PLAINTIFFS AND STATES OF PURCHASE

Plaintiff	**States of Packaged Ice Purchases**
Lawrence J. Acker	Michigan (Dkt. # 367 at ¶ 6)
Rich Aust	Tennessee (Dkt. # 419 at ¶ 7)
Brian W. Buttars	Florida, Maine and New York (Dkt. # 367 at ¶ 9)
Nathan Croom	Nebraska (*Croom v. Reddy Ice Holdings, Inc.*, et al., 8:12-cv-00007-FG3 (D. Neb.), Dkt. # 1 at ¶ 4)
Robert DeLoss	Iowa (*DeLoss v. Reddy Ice Holdings, Inc.*, et al., 5:12-cv-04004-MWB (N.D. Iowa), Dkt. # 2 at ¶ 4)
James Feeney	California, Maine and Nevada (Dkt. # 367 at ¶ 10)
Lehoma Goode	North Carolina (*Goode v. Reddy Ice Holdings, Inc., et al.*, 1:11-cv-01152 (M.D.N.C.), Dkt. # 6 at ¶ 6)
Ian Groves & Lynn Strauss	New Mexico (*Groves & Strauss v. Reddy Ice Holdings, Inc., et al.*, 1:12-cv-00111 (N.M.), Dkt. # 1 at ¶¶ 4-5)
Beverley Herron	Minnesota (*Herron v. Reddy Ice Holdings, Inc., et al.*, 0:12-cv-00029 (D. Minn.), Dkt. # 1 at ¶ 4)
Ainello Mancusi	New York (Dkt. # 367 at ¶ 11)
Ron Miastkowski	Florida (Dkt. # 367 at ¶ 12)
Brandi Palombella	Massachusetts, New York and Tennessee (*Palombella, et anon. v. Reddy Ice Holdings, Inc.*, et al., 1:12-cv-10072 (D. Mass.), Dkt. # 1 at ¶ 4); (Dkt. # 367 at ¶ 13)
Karen Prentice	Arizona (*Prentice v. Reddy Ice Holdings, Inc., et al.*, 2:12-cv-00104 (D. Ariz.), Dkt. # 1 at ¶ 4)
Brian Rogers	Arkansas (Dkt. # 420 at ¶ 7)
Patrick Simasko	Michigan (Dkt. # 367 at ¶ 7)
John Spellmeyer	Kansas (*Spellmeyer v. Corbin, et al.*, 11-cv-01108 (D. Kan.), Dkt. # 1 at 15-16)
Wilton E. Spencer, Jr.	Mississippi (*Spencer v. Reddy Ice Holdings, Inc.*, et al., 3:11-cv-092 (N.D. Miss.), Dkt. #1 at ¶ 6)
Wayne Stanford	Michigan and Wisconsin (Dkt. # 367 at ¶ 8)
Joe Sweeney	Massachusetts (*Palombella, et anon. v. Reddy Ice Holdings, Inc.*, et al., 1:12-cv-10072 (D. Mass.), Dkt. 1 at ¶ 5)
Samuel Winnig	Mississippi (*Winnig v. Reddy Ice Holdings, Inc.*, et al., 3:12-cv-00015 (N.D. Miss.), Dkt. 1 at ¶ 4)

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

JOHN SPELLMEYER, Individually and on Behalf of all others similarly situated, Plaintiff, vs. KEITH CORBIN, FRANK G. LARSON, GARY COOLEY, ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL, INC. HOME CITY ICE COMPANY, REDDY ICE HOLDINGS, INC., REDDY ICE CORPORATION, AND ARCTIC GLACIER INCOME FUND, Defendants.	)	Case No. 11-1108-CM-KGG

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, Defendants Reddy Ice Holdings, Inc. and Reddy Ice Corporation (collectively, "Reddy Ice") hereby remove the above-styled action from the Eighteenth Judicial District Court, Sedgwick County, Kansas to the United States District Court for the District of Kansas.

I. BACKGROUND

1. Keith Corbin, Frank G. Larson, Gary Cooley, Arctic Glacier, Home City, and Reddy Ice (collectively, "Defendants") have been named as defendants in a putative class action filed in the 18th Judicial District Court of Sedgwick County, Kansas, Civil Department, styled *John Spellmeyer, Individually and on behalf of those similarly situated, v. Keith Corbin, Frank G. Larson, Gary Cooley, Arctic Glacier Inc., Arctic Glacier International, Inc., Home City Ice*

Company, Reddy Ice Holdings, Inc., Reddy Ice Corporation, and Arctic Glacier Income Fund, Case No. 11-CV-0877 (the "State Court Action").

2. Defendants have not been formally served with process in the State Court Action.

3. Reddy Ice first received notice of the filing of the State Court Action through its counsel on March 14, 2011. This Notice of Removal is being filed within 30 days of the date that Reddy Ice first received notice of the State Court Action through service of process or otherwise. As a result, this Notice of Removal is filed timely.

4. A demand for trial by jury was made in the State Court Action.

II.
FEDERAL JURISDICTION

5. This lawsuit is subject to removal pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453 ("CAFA"). CAFA grants federal courts original jurisdiction over, and permits removal of, class actions in which: (1) the aggregate number of proposed plaintiffs is 100 or more; (2) any member of a class of plaintiffs is a citizen of a state different from any defendant, thereby establishing minimal diversity; (3) the primary defendants are not states, state officials, or other governmental entities; and (4) the aggregate amount in controversy of all of the putative class members' claims exceeds $5 million, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d)(2)(A), (d)(5)(A)-(B), and (d)(6).

6. The allegations contained in the Petition filed in the State Court Action (the "Petition") and the evidence submitted by Defendants in support of this Notice of Removal demonstrate that the jurisdictional requirements of CAFA are satisfied in this action. Accordingly, this Court has original jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(d), and this lawsuit is subject to removal pursuant to 28 U.S.C. § 1453.

A. The aggregate number of proposed class members exceeds 100 in this action.

7. Plaintiff alleges that the number of potential class members in this action is "thousands, if not millions." (Petition, ¶ 22). Based on that allegation, the aggregate number of proposed class members is greater than 100 and, therefore, satisfies the requirements of 28 U.S.C. § 1332(d)(5)(B).

B. Minimal diversity exists in this action.

8. CAFA requires only minimal diversity. 28 U.S.C. § 1332(d)(2)(A). Minimal diversity exists under CAFA when "any member of a class of plaintiffs is a citizen of a State different from any defendant[.]" 28 U.S.C. § 1332(d)(2)(A).

9. In the Petition, Plaintiff alleges that he is a citizen of the State of Kansas. (Petition, ¶ 2).

10. Plaintiff also alleges that Reddy Ice Holdings, Inc. is a Delaware corporation with its principal place of business located in Dallas, Texas. (Petition, ¶ 13). For purposes of diversity, Reddy Ice Holdings, Inc. is a citizen of Delaware and Texas. 28 U.S.C. § 1332(c)(1).

11. Thus, the allegations contained in the Petition establish that minimal diversity exists in this action because those allegations demonstrate that Plaintiff John Spellmeyer is a citizen of a state different than Defendant Reddy Ice Holdings, Inc.

C. The amount in controversy in this action exceeds $5 million.

12. Under CAFA, the amount in controversy must exceed $5 million exclusive of interest and costs for a federal district court to have original jurisdiction. 28 U.S.C. § 1332(d)(2). For purposes of CAFA, the claims of all class members shall be aggregated when evaluating the amount in controversy. 28 U.S.C. § 1332(d)(6).

13. In the Petition, Plaintiff has not stated the amount that he seeks to recover on behalf of the putative class in this action. Nevertheless, the allegations contained in the Petition

and the Declarations of Mark Steffek and Dave Potter submitted in support of Defendants' Notice of Removal demonstrate that the amount in controversy in this action exceeds $5 million exclusive of interest and costs.

14. In the Petition, Plaintiff alleges that Defendants engaged in "illegal and anticompetitive conduct by allocating markets so that Defendants were no longer in competition with each other. " (Petition, ¶ 35).

15. Plaintiff also alleges that the alleged allocation of markets in the packaged ice industry resulted in reduced competition in Kansas, and caused Plaintiff and other members of the alleged class to pay anticompetitive and higher prices for packaged ice than they would have in the absence of the alleged illegal conduct. (Petition, ¶¶ 37, 38).

16. Plaintiff further alleges that there are thousands, if not millions, of purported class members who purchased ice in Kansas over the alleged class period of January 1, 2001 to March 2008. (Petition, ¶¶ 22, 33).

17. Based on those allegations, Plaintiff has asserted claims for violation of the Kansas Restraint of Trade Act, violation of the Kansas Consumer Protection Act, and unjust enrichment. With respect to the claims under the Kansas Restraint of Trade Act and the Kansas Consumer Protection Act, Plaintiff seeks to recover actual damages allegedly incurred by persons that purchased packaged ice in Kansas from the period of January 1, 2001 through March 2008, in addition to treble damages and attorneys' fees. (Petition, ¶¶ 53, 57, Prayer for Relief, ¶¶ E, F, G, J).

18. For purposes of calculating the amount in controversy under the Kansas Restraint of Trade Act, Plaintiff seeks the full consideration paid by putative class members for packaged

ice, and treble damages. *Four B Corp. v. Daicel Chemical Indus., Ltd.*, 253 F. Supp. 2d 1147, 1150 (D. Kan. 2003).

19. During the period of January 1, 2001 through March 2008, Reddy Ice's sales of packaged ice to its customers in Kansas exceeded $9.3 million. (Declaration of Mark Steffek ("Steffek Decl.", ¶ 4) (attached hereto as Exhibit A).

20. During the period of January 1, 2001 through March 2008, Arctic Glacier's sales of packaged ice to its customers in Kansas exceeded $27 million. (Declaration of Dave Potter ("Potter Decl."), ¶ 4) (attached hereto as Exhibit B).

21. In addition, the vast majority of Reddy Ice's and Arctic Glacier's customers in Kansas are grocery stores and convenience stores that purchased ice from Reddy Ice or Arctic Glacier, and then resold such ice to indirect purchasers in Kansas. Virtually all, if not all, of the customers that purchased packaged ice from Reddy Ice or Arctic Glacier during the alleged class period independently marked-up the price of such ice prior to reselling it to indirect purchasers in Kansas. (Steffek Decl., ¶ 5; Potter Decl., ¶ 5).

22. Furthermore, in addition to full consideration damages, Plaintiff also seeks to recover treble damages and attorneys' fees. When the value of those categories of damages are combined with the actual, full consideration damages Plaintiff seeks to recover on behalf of the putative class in this case, it is beyond dispute that it is more likely than not that the amount in controversy in this action exceeds $5 million exclusive of interest and costs. *See Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 689 (9th Cir. 2006) (Under CAFA, if the proponent of jurisdiction establishes that it is more likely than not that class members seek more than $5 million, then the proponent has satisfied its burden with respect to the amount in controversy); *Valikhani v. Qualcomm Inc.*, No. 08CV786 WQH, 2008 WL 3914456, at *4 (S.D. Cal. Aug. 21,

2008) (finding the defendant established that it was more likely than not that the amount in controversy exceeded $5 million); *see also Armur v. Transamerica Life Ins. Co.*, No. 10-2136-EFM, 2010 WL 4180459, at *3 (D. Kan. Oct. 20, 2010) (finding that the defendant established that the amount in controversy exceeded $5 million even though plaintiff attempted to avoid federal jurisdiction by alleging that the plaintiffs sought less than $75,000 individually).

23. As a result, the jurisdictional minimum for the amount in controversy under CAFA is satisfied in this case.

D. Defendants are not states, state officials, or other governmental entities.

24. Reddy Ice, Arctic Glacier and Home City are corporate entities and are not states or other governmental entities.

25. In addition, Plaintiff alleges in the Petition that Defendants Keith Corbin, Frank G. Larson, and Gary Cooley are former employees of Arctic Glacier. (Petition, ¶¶ 42-44). None of those individuals are officials of the State of Kansas or any other state.

26. No Defendant is a state, state official, or other governmental entity. Removal under CAFA is therefore proper under 28 U.S.C. § 1332(d)(5)(A).

III.
ALL ADDITIONAL REQUIREMENTS FOR REMOVAL HAVE BEEN MET

27. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a), as the United States District Court for the District of Kansas is the district within which the State Court Action is pending.

28. Contemporaneously with the filing of this Notice of Removal, Defendants will provide all parties with written notice of the filing, and will promptly file a copy of this Notice of Removal with the Clerk of the 18th Judicial District Court of Sedgwick County, Texas.

29. In addition, attached hereto as Exhibit C is an index of all documents filed in the State Court Action, which clearly identifies each document and indicates the date the document was filed in the State Court Action, as required by 28 U.S.C. § 1446(a). Included with the index is a copy of each document filed in the State Court Action, individually tabbed and arranged in chronological order according to the state court filing date.

Wichita, Kansas is designated as the place of trial.

Respectfully submitted,

/s/Megan E. Garrett
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Megan E. Garrett (#23433)
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Attorneys for Defendants Reddy Ice Corporation and Reddy Ice Holdings, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of April, 2011, the above and foregoing was electronically filed with the clerk of the court by using the CM/ECF system, and mailed, postage prepaid and properly addressed, through the United States mail, to the following CM/ECF participants:

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/s/Megan E. Garrett

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

JOHN SPELLMEYER, Individually and on Behalf of all others similarly situated, Plaintiff, vs. KEITH CORBIN, FRANK G. LARSON, GARY COOLEY, ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL, HOME CITY ICE COMPANY, REDDY ICE HOLDINGS, INC., REDDY ICE CORPORATION, AND ARCTIC GLACIER INCOME FUND, Defendants.	)	Case No. _____

DECLARATION OF MARK STEFFEK
IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL

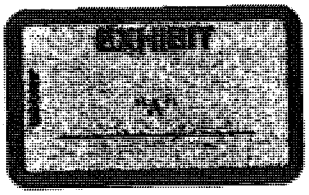
I, Mark Steffek, declare as follows:

1. I make this declaration in support of the Notice of Removal filed by Defendants in the above-styled action.

2. The following facts are within my personal knowledge and, if called as a witness, I could and would competently testify thereto.

3. I am the Vice President of Finance of Reddy Ice Corporation ("Reddy Ice"). In the performance of my duties as the Vice President of Finance of Reddy Ice, I have personal knowledge of the records Reddy Ice maintains with respect to its sales of packaged ice. I am also familiar with Reddy Ice's customers and the manner in which those customers use the packaged ice purchased from Reddy Ice.

4. I have reviewed the records relating to the amount of packaged ice Reddy Ice sold to customers in Kansas for the period of January 1, 2001 through March 2008. Between January 1, 2001 and March 2008, Reddy Ice's sales of packaged ice to customers in Kansas exceeded $9.3 million.



5. In addition, the vast majority of Reddy Ice's customers in Kansas are grocery stores and convenience stores that purchase ice from Reddy Ice and then resell that ice. It is my understanding that it is the normal course of business for virtually all, if not all, of Reddy Ice's customers that purchase packaged ice for resale from Reddy Ice to mark-up the price of such ice prior to reselling it in Kansas. As a result, the amount that indirect purchasers collectively paid for packaged ice originally sold by Reddy Ice in Kansas over the period of January 1, 2001 through March 2008 was significantly greater than $9.3 million.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed in Dallas, Texas on the 13th day of April 2011.

MARK STEFFEK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

JOHN SPELLMEYER, Individually and on Behalf of all others similarly situated, Plaintiff, vs. KEITH CORBIN, FRANK G. LARSON, GARY COOLEY, ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL, HOME CITY ICE COMPANY, REDDY ICE HOLDINGS, INC., REDDY ICE CORPORATION, AND ARCTIC GLACIER INCOME FUND, Defendants.	)	Case No. _____

DECLARATION OF DAVE POTTER
IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL

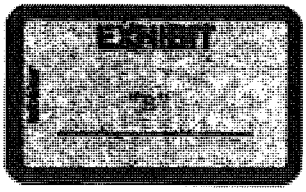
I, Dave Potter, declare as follows:

1. I make this declaration in support of the Notice of Removal filed by Defendants Arctic Glacier Inc., Arctic Glacier International Inc., Arctic Glacier Income Fund (collectively, "Arctic Glacier"), Keith Corbin, Frank G. Larson, Gary Cooley, Home City Ice Company, Reddy Ice Holdings, Inc. and Reddy Ice Corporation (collectively, "Defendants") in the above-styled action.

2. The following facts are within my personal knowledge and, if called as a witness, I could and would competently testify thereto.

3. I am currently Arctic Glacier's Vice President, Midwest Operating Division. In the performance of my duties as Vice President, Midwest Operating Division, I have personal knowledge of Arctic Glacier's sales in Kansas and the records Arctic Glacier maintains with respect to its sale of packaged ice. I am also familiar with Arctic Glacier's business practices, customers and the manner in which customers use the packaged ice purchased from Arctic Glacier.

4. I have reviewed the records relating to the amount of packaged ice Arctic Glacier



sold to customers in Kansas for the period of January 1, 2001 through March 2008. Between January 1, 2001 and March 2008, Arctic Glacier's sales of packaged ice to customers in Kansas exceeded $27 million.

5. In addition, the vast majority of Arctic Glacier's customers in Kansas are grocery stores and convenience stores that purchase ice from Arctic Glacier, and then resell that ice. Virtually all, if not all, of Arctic Glacier's customers that purchase packaged ice for resale mark-up the price of such ice, as they see fit, prior to reselling it in Kansas.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed in Omaha, Nebraska on the 12th day of April, 2011.

Dave Potter

SalesYear	ItemClass	SalesUnits	Sales
2001	ICE-BAG-LG	910,906	$1,494,662.20
2002	ICE-BAG-LG	932,922	$1,617,591.75
2003	ICE-BAG-LG	961,323	$1,687,017.33
2004	ICE-BAG-LG	988,937	$1,851,896.12
2005	ICE-BAG-LG	1,099,244	$2,165,382.16
2006	ICE-BAG-LG	1,196,310	$2,440,314.93
2007	ICE-BAG-LG	1,284,454	$2,799,949.35
2008	ICE-BAG-LG	112,041	$244,256.64
2001	ICE-BAG-SM	2,641,716	$1,703,072.76
2002	ICE-BAG-SM	2,602,609	$1,747,721.22
2003	ICE-BAG-SM	2,558,401	$1,757,525.41
2004	ICE-BAG-SM	2,458,722	$1,689,389.77
2005	ICE-BAG-SM	2,767,671	$1,897,840.31
2006	ICE-BAG-SM	2,651,136	$1,929,699.31
2007	ICE-BAG-SM	2,527,288	$1,912,660.43
2008	ICE-BAG-SM	267,050	$203,937.06
		25,960,730	$27,142,916.75

WITHHELD

RAY HODGE & ASSOCIATES, L.L.C.
ATTORNEYS AT LAW
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Wichita, KS 67202
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IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

JOHN SPELLMEYER, Individually and on behalf of all others similarly situated
Plaintiff,

vs.

KEITH CORBIN, FRANK G. LARSON, GARY COOLEY, ARCTIC GLACIER, INC., ARCTIC GLACIER INTERNATIONAL, INC., HOME CITY ICE COMPANY, REDDY ICE HOLDINGS, INC, REDDY ICE CORPORATION, ARCTIC GLACIER INCOME FUND,
Defendants.

11C V 0877
Case No.:
CLASS ACTION

(no summons)

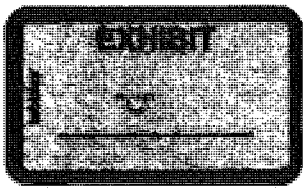
PURSUANT TO CHAPTER 60 of K.S.A.

CLASS ACTION PETITION

Plaintiff, individually and on behalf of all others similarly situated, files this Class Action Petition complaining of the restraint of trade and antitrust activities of Defendants. The allegations set forth below are based upon information and belief pursuant to the investigation of counsel, except as to those allegations regarding the plaintiff.

1. Defendants conspired to fix prices, allocate markets, and restrain trade of packaged cubed, crushed, block, and dry ice ("Packaged Ice") sold in the United States and Canada, resulting in Plaintiff and the putative Class paying higher prices for which they seek full consideration damages, trebled, plus attorney fees and prejudgment interest. K.S.A. 50-*101, et. seq*

2. Plaintiff John Spellmeyer is a citizen of the State of Kansas. He purchased packaged ice indirectly from one or more of the defendants' co-conspirators between 2001 and



2008. Plaintiff made such purchases at, among other places, retail establishments in Wichita, Kansas.

3. Defendant Keith E. Corbin at all relevant times, was employed by Arctic Glacier as Vice President of Sales and Marketing.

4. Defendant Frank G. Larson at all relevant times, was employed by Arctic Glacier as Executive Vice President of Operations.

5. Defendant Gary D. Cooley at all relevant times, was employed by Arctic Glacier as Vice President of Sales and Marketing.

6. Arctic Glacier Income Fund is a mutual fund trust organized under the laws of Alberta, Canada.

7. Defendant Arctic Glacier Inc. ("Arctic Glacier") is the operating subsidiary of a Winnipeg, Manitoba, Canada holding company. Arctic Glacier claims to be the "leading producer, marketer and distributor of high-quality packaged ice in North America under the brand name of Arctic Glacier® Premium Ice. Arctic Glacier operates 37 manufacturing plants and 50 distribution facilities across Canada and the northeast, central and western United States servicing more than 70,000 retail accounts." Arctic Glacier Inc. shows on its website that it has a production facility in Kansas at 215 E. 27th Street South, Wichita, KS 67216 and distribution centers in Independence and Salina, KS, but is not authorized to do business in Kansas and can be served through the Secretary of State or by serving it direct at its U.S. headquarters at 1654 Marthaler Lane, West St. Paul, MN 55118.

8. Defendant Arctic Glacier International Inc. ("Arctic Glacier International") is a wholly-owned subsidiary of Arctic Glacier Inc., and is a Delaware Corporation with its principal place of business located in West St. Paul, Minnesota, and is not authorized to do business in Kansas but can be served with process by serving the Secretary of State or by serving it at its principal place of business at 1654 Marthaler Lane, West St. Paul, MN 55118.

9. Arctic Glacier reported its 2007 total sales of $249.1 million. On its website, Arctic Glacier explains its market position as follows:

> We have grown significantly since our start in 1996, primarily through an aggressive acquisition strategy in the highly fragmented ice production and distribution industry. We

> have acquired 63 packaged ice businesses in Canada and the United States to date at a cost of more than $470 million. These geographically contiguous acquisitions have established our critical mass, allowing us to improve financial results by leveraging our investments in infrastructure and brand development. We are now the largest producer and distributor of packaged ice in each of the markets that we operate.

10. Defendant Reddy Ice Holdings, Inc. ("Reddy Ice") is a corporation, organized under the laws of the State of Delaware.

11. Reddy Ice Holdings is the parent of its wholly-owned subsidiary, defendant Reddy Ice Corporation ("Reddy Ice Corp"). Reddy Ice is a Delaware corporation.

12. Reddy Ice is the largest manufacturer and distributor of packaged ice in the United States. Reddy Ice's products are primarily sold throughout the southern United States. Within its territories, Reddy Ice is and has been the leading manufacturer and distributor of packaged ice. Reddy Ice has had over 80% of its packaged ice sales in territories where it is the leading manufacturer.

13. Defendant Reddy Ice Holdings, Inc. ("Reddy Ice") is a Delaware corporation with its principal place of business located in Dallas, Texas. It can be served by serving its registered agent, Capitol Corporate Services, Inc., 700 S.W. Jackson, #100, Topeka, KS 66603.

14. Reddy Ice is the largest U.S. maker and distributor of Packaged Ice products. It has the capacity to make about 15,000 tons of ice per day. It sells ice in a variety of shapes and sizes (ranging from seven-pound bags to 300 pound blocks) to retail, commercial, and industrial customers throughout the southern U.S. and the District of Columbia. It has described itself in Press Releases as follows:

> Reddy Ice Holdings, Inc. is the largest manufacturer and distributor of packaged ice in the United States. With over 2,000 year-round employees, the Company sells its products primarily under the widely known Reddy Ice® brand to approximately 82,000 locations in 31 states and the District of Columbia. The Company provides a broad array of product offerings in the marketplace through traditional direct store delivery, warehouse programs, and its proprietary technology, The Ice Factory®. Reddy Ice serves most significant consumer packaged goods channels of distribution, as well as restaurants, special entertainment events, commercial users and the agricultural sector.

15. Defendant Home City Ice Company ("Home City Ice") is a privately-held company, which has its headquarters in Cincinnati, Ohio. Home City Ice is not authorized to do business in Kansas but can be served with process by serving the Secretary of State or by serving it at its principal place of business at 5709 Harrison Avenue, Cincinnati,

OH 45248.

16. Home City is the third largest manufacturer and distributor of packaged ice in the United States with sales that have grown to more than $80 million per year.

17. Home City Ice retails ice in the Mideast. On its website, Home City Ice describes itself as follows:

> Home City Ice retails ice across all of Ohio, Indiana, Illinois, Kentucky, and West Virginia, as well as parts of Michigan, Pennsylvania, Tennessee, New York, and Maryland. Home City Ice manufactures 4,400 tons of ice per day in 28 state-of-the-art manufacturing plants, with 36 distribution centers, and has a fleet of over 500 trucks to serve the Midwest.

JURISDICTION AND VENUE

18. Jurisdiction and venue are proper in this Court as one or more Defendants are authorized to do business in Kansas and have done or are doing business in the County where Plaintiff and some members of the Class reside and were injured. The other Defendants are subject to personal jurisdiction as co-conspirators. Jurisdiction is further premised upon K.S.A. 50-110(a).

19. Venue is proper pursuant to K.S.A. 60-604, 605, and 608 in that the cause of action arises and/or accrues in this County and that Plaintiff sustained damages in this County.

20. Amount in Controversy. Plaintiff and the proposed class do not make a claim under any federal law. Individually, Plaintiff does not seek or claim any right to recover in excess of $75,000.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this antitrust class action pursuant to K.S.A. 60-223 on behalf of the "Class" defined as:

> All individuals or entities (excluding governmental entities, defendants, their officers, directors, subsidiaries or affiliates), who indirectly purchased, but not for resale, Packaged Ice in Kansas from at least January 1, 2001-until the effect of the conspiracy ceases. Excluded from the Class are: (1) all Defendants and their respective officers, directors, employees, subsidiaries, and affiliates; (2) all currently incarcerated persons in the federal, state or local prison or jail systems; and (3) all judges or justices assigned to hear any aspect of this case.

NUMEROSITY OF CLASS

22. The proposed Class is so numerous that the individual joinder of all of its members is

impracticable. The exact number and identities of Class Members are unknown to Plaintiff at this time and can be ascertained only through appropriate discovery. Plaintiff is informed and believes that thousands if not millions of consumers in the Class have indirectly purchased Packaged Ice during the Class Period. Accordingly, the Class is sufficiently numerous that joinder of all members of the Class is impracticable.

EXISTENCE OF COMMON QUESTIONS OF LAW AND FACT

23. Numerous questions of law and fact that are common and of general interest to the Class exist as to all members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants entered into an agreement to fix prices, allocate territories, or restrain trade for Packaged Ice;

b. Whether Defendants' agreement did, in fact, fix, raise, stabilize and/or maintain prices for Packaged Ice;

c. Whether Defendants' conduct constitutes a violation of K.S.A. 50-101, *et. seq.*;

d. Whether Plaintiff and members of the Class sustained damage as a result of Defendants' conduct.

e. Whether Defendants conduct violated various provisions of the Kansas Consumer protection act.

TYPICALITY OF CLAIMS

24. Plaintiff's claims are typical of those of the Class they represent because Plaintiff and all of the Class Members were injured in the same manner by Defendants' illegal practices and wrongful conduct in the conspiracy to restrain trade complained of herein, *i.e.*, they have been forced to pay supracompetitive prices for Packaged Ice.

ADEQUATE REPRESENTATION

25. Plaintiff will fairly and adequately protect and represent the interests of the members of the Class. The interest of the Plaintiff is coincident with, and not antagonistic to, those of the Class. Plaintiff has retained counsel competent and experienced in class action antitrust litigation.

PREDOMINANCE AND SUPERIORITY

26. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that individual actions would require. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

27. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

28. This cause of action may be maintained as a class action pursuant to K.S.A. 60-223 in that separate prosecution of Class Member claims creates the risk of inconsistent adjudications with respect to behavior that is equally applicable to the entire Class and/or members individually as set forth with more specificity below. Furthermore separate prosecution of Class Member claims could establish incompatible standards for one or more of the defendants that oppose the class and as a practical matter such adjudications would be dispositive to the interests of the class members not parties to such individual adjudications or such individual actions would impair or impede the ability of class members that were not parties to such individual adjudications to protect their interests. Therefore, class action treatment of this dispute is superior to all other available means of resolving this controversy.

SUBSTANTIVE ALLEGATIONS

29. The United States Department of Justice ("U.S. DOJ"), Antitrust Division has investigated the possibility of anti-competitive practices in the packaged-ice industry, and each Defendant has acknowledged the existence of the investigation and that each has received a subpoena or search warrant. On March 9,2008 an Arctic Glacier News Release acknowledged the subpoena, and on March 6, 2008 a Reddy Ice Press Release acknowledged the search warrant. Reddy Ice admitted its board of directors has formed a special committee of independent directors to conduct an internal

investigation. The U.S. DOJ did in fact take various documents and information from Reddy Ice.

30. In the months just preceding the execution of the search warrant, the Chief Executive Officer and President of Reddy Ice (Jimmy C. Weaver) and the Chief Operating Officer of Reddy Ice (Raymond D. Booth) both resigned. This was confirmed by Reddy Ice Press Releases dated November 30, 2007 and dated January 2, 2008.

31. Defendants' anticompetitive scheme has directly and substantially affected intrastate commerce and Defendants have deprived Plaintiff and the Class of the benefits of free and open competition in the Packaged Ice market.

32. Sales of Packaged Ice in the United States and Canada are believed to be over $1 billion annually. About half of those sales are produced by third-party manufacturers, with the other half produced in-house (ice machines). Sales by Defendants comprise approximately 70% of third-party manufacturers' sales of Packaged Ice.

33. Beginning at least as early as January 1, 2001, the exact date being presently unknown to Plaintiff, and continuing thereafter to at least March of 2008, Defendants engaged in an unlawful contract, combination, or conspiracy with the purpose and effect of fixing prices, allocating markets, and committing other anti competitive practices designed to unlawfully fix, raise, maintain, and/or stabilize prices of Packaged Ice in violation of the Kansas antitrust statutes.

34. The Packaged Ice industry has high barriers to entry. The industry has high start-up and replacement costs, and many retailers carry only one brand of ice and have long-term relationships with the manufacturer from whom they purchase Packaged Ice products.

35. During the Class Period, Defendants engaged in illegal and anticompetitive conduct by allocating markets so that Defendants were no longer in competition with each other.

36. This resulted in the following market division: (1) Reddy Ice has the dominant market position in the U.S. Sunbelt states, from Florida to Arizona, and the Northwest; (2) Arctic has a dominant market position in Minnesota, the Central and Northeastern states and California; and (3) Home City Ice has a dominant market position in the Midwest. During the conspiracy there was virtually no

overlap between the geographic markets in which each Corporate Defendant operated. Defendants agreed not to compete head to head in any of the markets in which one of them was dominant.

37. This allocation of the Packaged Ice market among the Defendants reduced or eliminated price competition throughout the United States and Canada including Kansas.

38. As a result of the aforesaid scheme:

a. price competition for Packaged Ice has been suppressed, restrained, and/or eliminated in Kansas;

b. the price of Packaged Ice has been raised, fixed, maintained, and stabilized at artificial and non-competitive levels in Kansas; and

c. purchasers of Packaged Ice were deprived of free and open competition in the Packaged Ice market in Kansas.

39. Defendants' wrongful conduct has damaged Plaintiff and the Class in that they paid anticompetitive and higher prices than they would have paid in the absence of the illegal conduct.

CRIMINAL CONVICTIONS RELATED TO THE CONSPIRACY

40. On June 7, 2008, Thomas E. Sedler, President and Chief Executive Officer of Home City, on behalf of Home City, pleaded guilty to violating Section 1 of the Sherman Act. In the plea Sedler indicated under oath that since 2001 Home City was a part of a conspiracy among packaged ice producers. He further indicated and that the purpose of the conspiracy was to divide customers and territories in south eastern Michigan and the Detroit Michigan area. According to Sedler the conspiracy was furthered by discussions and meetings with representatives of other packaged ice producers and that during these discussions agreements were reached to divide customers and territories in southeastern Michigan and Detroit.

41. On November 10, 2009, Hugh A. Adams, Secretary and General Counsel of Arctic Glacier, on behalf of Arctic Glacier, pleaded guilty to violating § 1 of the Sherman Act. Adams indicated under oath that since 2001, and continuing until at least July 17th, 2007 that Artic Glacier and co-conspirators entered into and engaged in a

conspiracy to suppress and eliminate competition by allocating packaged-ice customers in southeastern Michigan and the Detroit, area.

42. On October 13, 2009, Corbin pleaded guilty to violating § 1 of the Sherman Act. Corbin indicated under oath that beginning as early as March 1, 2005 and continuing until at July 17, 2007, he participated in a conspiracy to allocate customers of packaged ice sold in southeastern Michigan and the Detroit metropolitan area.

43. On October 13, 2009, Cooley pleaded guilty to violating § 1 of the Sherman Act. Cooley indicated under oath that at least as early as June 1st, 2006, and continuing until at least July 17th, 2007, Arctic Glacier and other co-conspirators entered into and engaged in a conspiracy to suppress and eliminate competition by allocating packaged-ice customers in southeastern Michigan and the Detroit area.

44. On October 13, 2009, Larson pleaded guilty to violating § 1 of the Sherman Act. Larson indicated under oath that at least as early as March 1st, 2005, and continuing until at least July 17th, 2007, Arctic Glacier and co-conspirators entered into and engaged in a conspiracy to suppress and eliminate competition by allocating packaged-ice customers in southeastern Michigan and the Detroit area.

45. Given that the defendants, some of whom did not have a presence in the Southeastern Michigan and Detroit area plead guilty to anti trust, it is reasonable to infer that some of the defendants we given territories outside of Southeastern Michigan and Detroit as a quid pro quo for the allocation of the market for packaged ice in the Southeastern Michigan and Detroit area to a single one of the corporate defendants.

46. Because the corporate defendants operate throughout the United States it is reasonable to infer that part of that market allocation included Kansas.

COUNT I: VIOLATION OF KANSAS RESTRAINT OF TRADE ACT

47. Plaintiff hereby adopts and incorporates by this reference each of the preceding paragraphs as if fully set forth herein.

48. Defendants have engaged in a continuing combination, and conspiracy in restraint of trade and commerce as described herein, all in violation of Kan. Stat. Ann. 50-101 *et seq.*

49. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the

Class were injured in that they were forced to pay higher prices for Packaged Ice than they would have had to pay if the prices charged by Defendants were the product of fair and open competition.

50. Plaintiff and the Class are therefore entitled to treble full consideration damages, plus costs, pre- and post-judgment interest, and attorneys' fees.

COUNT II: CONSUMER PROTECTION STATUTE

51. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

52. Through paying more for packaged ice than they would have in the absence of defendants' wrongful conduct, plaintiff and the class have conferred a benefit on defendants.

53. As a result of defendants' wrongful conduct, defendants were able to charge more for packaged ice which overpayments were made by plaintiff and the class.

54. The plaintiff in this case and the class are consumers as defined in the Kansas Consumer Protection Act and as further refined in the class action allegation section of this petition.

55. The transactions between one or more of the defendants with the plaintiff and the plaintiff class were consumer transactions as defined in the Kansas Consumer Protection Act.

56. One or more of the corporate defendant's is a supplier as defined in the Kansas Consumer Protection Act.

57. The corporate defendants' actions constitute deceptive acts and practices under the Kansas Consumer Protection Act. More specifically, the actions set out in this petition violate the Kansas Consumer protection act in that by failing to disclose that the prices of its products were artificially high because of an illegal agreement the defendants engaged

    a. in a willful failure to state material facts; and

    b. in the willful concealment, suppression and omission of material facts

when it engaged in sales transactions with the plaintiff and the plaintiff class.

58. The corporate defendants further committed unconscionable acts under the Kansas Consumer protection act in that:

a. The supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor;

b. When the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers;

c. The consumer was unable to receive a material benefit from the subject of the transaction

d. The transaction the supplier induced the consumer to enter into was excessively one sided in favor of the supplier;

COUNT THREE: UNJUST ENRICHMENT

59. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

60. Through paying more for packaged ice than they would have in the absence of defendants' wrongful conduct, plaintiff and the class have conferred a benefit on defendants.

61. As a result of defendants' wrongful conduct, defendants were able to charge more for packaged ice which overpayments were made by plaintiff and the class.

62. Defendants have been unjustly enriched by overpayments made by plaintiff and the class. Equity demands that defendants be required to make restitution and return the overpayments to plaintiff and the class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court award them the following relief:

A. That the Court determine that this action may be certified and maintained as a Class under K.S.A. 60-223(b)(1) and (3);

B. That the Court appoint Plaintiff as representatives of the Class;

C. That the Court appoint Plaintiff s counsel as counsel for the Class;

D. That the Court adjudge and decree the alleged combination and conspiracy among the Defendants and their co-conspirators to be in violation of the Kansas Restraint of Trade Act;

E. That the Court enter judgment against Defendants and in favor of Plaintiff and the members of the Class they represent for three-fold overcharge damages determined to have been sustained by Plaintiff and members of the Class they represent, and that a joint and several judgment be entered against the Defendants;

F. That the Court award the Class full consideration damages under K.S.A. 50-115, trebled under K.S.A. 50-801, against Defendants, both jointly and severally, in an amount to be proven at trial;

G. That the Court award Plaintiff and the members of the Class interest at the maximum rate allowed by law or equity and reasonable attorneys' fees; and

H. That the Court award Plaintiff and the members of the Class the represent costs reasonably incurred in the prosecution of this litigation.

I. That the Court find that defendants collectively and individually engaged in violations of the consumer protection act including deceptive and unconscionable acts and practices.

J. That the Court award damages, penalties and attorneys fees as allowed by law in accordance with the Kansas Consumer Protection Act.

Submitted by:

RAY HODGE & ASSOCIATES, L.L.C.

Ryan Hodge, #16180

JURY DEMAND

Plaintiff hereby demands a trial by jury, of all issues so triable in this case.

Ryan Hodge, #16180

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APP DOCKET NO.
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SEDGWICK COUNTY, KS
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Case Subsections:

- Defendants
- Plaintiffs
- Hearings
- Case Judge
- Registry of Actions

Case Number: 877		
Case Year: 2011	Case UID: 2011-CV-000877-OT	
Case Type: CV	Filed: 2011-03-04	
Case Sub-type: Other		
Advisement Date:	Remand Date:	
Appealed: N	Appealed Date:	
Status Code: 1	Status Date:	
Status Description: Pending		
Defendant		
Party 1		
Defendant Number: 1		
Last Name (or Business Name): Corbin		
First Name: Keith	Middle:	Suffix:
Description		
Sex: M	Race:	
Height:	Weight:	
Party 2		
Defendant Number: 2		
Last Name (or Business Name): Larson		
First Name: Frank	Middle: G	Suffix:
Description		
Sex: M	Race:	
Height:	Weight:	
Party 3		
Defendant Number: 3		
Last Name (or Business Name): Cooley		
First Name: Gary	Middle:	Suffix:
Description		
Sex: M	Race:	
Height:	Weight:	
Party 4		
Defendant Number: 4		
Last Name (or Business Name): Arctic Glacier Inc		
First Name:	Middle:	Suffix:
Description		
Sex:	Race:	
Height:	Weight:	

Party 5		
Defendant Number: 5		
Last Name (or Business Name): Arctic Glacier International Inc		
First Name:	Middle:	Suffix:
Description		
Sex:	Race:	
Height:	Weight:	
Party 6		
Defendant Number: 6		
Last Name (or Business Name): Home City Ice Company		
First Name:	Middle:	Suffix:
Description		
Sex:	Race:	
Height:	Weight:	
Party 7		
Defendant Number: 7		
Last Name (or Business Name): Reddy Ice Holdings Inc		
First Name:	Middle:	Suffix:
Description		
Sex:	Race:	
Height:	Weight:	
Party 8		
Defendant Number: 8		
Last Name (or Business Name): Reddy Ice Corporation		
First Name:	Middle:	Suffix:
Description		
Sex:	Race:	
Height:	Weight:	
Party 9		
Defendant Number: 9		
Last Name (or Business Name): Arctic Glacier Income Fund		
First Name:	Middle:	Suffix:
Description		
Sex:	Race:	
Height:	Weight:	
Plaintiff		
Party		
Plaintiff Number: 1	Amount Claimed: 0.00	
Last Name (or Business Name): Spellmeyer		
First Name: John	Middle:	Suffix:
Description		
Sex: M	Race:	
Height:	Weight:	
Plaintiff Attorney		
Last Name: Hodge	First: Ryan	Middle: E
Primary Attorney: Y	Court Appointed: N	Conflict Attorney: N
Withdrawn: N	Send Notices: Y	
Practice or Office: Ray Hodge & Associates		
Hearings		

Hearing			
Hearing Number: 1	Jury Hearing: N		
Hearing Type: Civil Discovery Conference			
Starts: 2011-05-04 at 09:15:00			
Court Room Number: Courtroom 6-4			
Ends: 2011-05-04 at 09:30:00	Results Code:		
Hearing Results:			
Hearing Comments:			
Judge			
Last Name: Lahey, Div. 8	First: Timothy	Middle: G	Suffix:
Case Judge			
Last Name: Goering	First: Jeffrey	Middle: E	Suffix:
Registry of Actions			
Action 1			
Action Date: 2011-03-04	Action Type: AOR		
Action Agent: Jeffrey E Goering			
Description: Plaintiff: Spellmeyer, John Attorney of Record Ryan E Hodge			
Action 2			
Action Date: 2011-03-04	Action Type: PET		
Action Agent: Jeffrey E Goering			
Description: Petition (no summons) &			
Action 3			
Action Date: 2011-03-04	Action Type: DJT		
Action Agent: Jeffrey E Goering			
Description: Demand for Jury Trial p/atty Ryan Hodge			
Action 4			
Action Date: 2011-03-07	Action Type:		
Action Agent: Jeffrey E Goering			
Description: Filing: Civil Docket Fee Paid by: Hodge, Ryan E (attorney for Spellmeyer, John) Receipt number: 1179103 Dated: 3/7/2011 Amount: $175.50 (Check) For: Spellmeyer, John (plaintiff)			
Action 5			
Action Date: 2011-03-07	Action Type: HEAR		
Action Agent: Timothy G Lahey, Div. 8			
Description: Hearing Scheduled (Civil Discovery Conference 05/04/2011 09:15 am)			

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EXHIBIT B

U.S. Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC., *et al.*,[1]	:	Case No. 12-10605 (KG)
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	**Ref Docket Nos.** _____

ORDER, PURSUANT TO SECTIONS 105(a), 363, 1501, 1507, 1520, 1521 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004, 7023 AND 9019, APPROVING AGREEMENT SETTLING CLAIMS OF INDIRECT PURCHASERS

Upon consideration of the joint motion (the "Motion"), dated February6, 2014, of Wild Law Group PLLC ("Class Counsel"), in its capacity as counsel to the class of indirect purchasers certified on a final basis herein for settlement purposes, Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") of the 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"), and the Debtors, seeking entry of an Order,

[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); and (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

pursuant to sections 105(a), 363(b), 1501, 1507, 1520, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 7023, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (a) approving, on a final basis, that certain *Settlement Agreement*, entered into as of October 22, 2013, individually and on behalf of (i) the Settlement Class,[2] (ii) the Debtors, and (iii) the Monitor (the "Settlement Agreement"), a copy of which is annexed to the U.S. Approval Order as Exhibit A; (b) establishing the procedures by which Settlement Class Members must file Claim Forms; (c) approving the form and manner of notice thereof; (d) approving the audit and challenge procedures described in the Settlement Agreement; (e) authorizing the Monitor, subject to the occurrence of the Payment Trigger Date, to transfer the Net Settlement Amount to the Claims Administrator; (f) subject to the occurrence of the Payment Trigger Date, authorizing the Claims Administrator to distribute the Net Settlement Amount to the holders of Approved Claims in the manner provided in the Settlement Agreement; (g) approving the release and exculpation provisions contained in the Settlement Agreement; and (h) granting related relief; and this Court having previously entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70], the *Order Recognizing and Enforcing Claims Procedure Order of the Canadian Court* [Docket No. 166], the *Order Approving Stipulation By and Between the Monitor, the Debtors and Wild Law Group Granting Partial and Limited Relief from the Automatic Stay to Proceed with Certain Discovery* [Docket No. 220], and the *Order Pursuant to Sections 105(a), 363(b), 1501, 1520, and 1521(a)(7) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9014, and 9019 Recognizing and Enforcing the Canadian Approval Order and Granting Certain Preliminary*

---

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to those terms in the Settlement Agreement.

Approvals in Connection with the Agreement Settling the Claims of Indirect Purchasers [Docket No. 260] (the "Preliminary Approval Order"); and upon the *Thirteenth Report of the Monitor* [Docket No. 246] (the "Thirteenth Monitor's Report") and the *Fourteenth Report of the Monitor* [Docket No. 279]; and upon the *Declaration of Matthew S. Wild*, dated November 11, 2013 [Docket No 255] (the "Preliminary Approval Declaration") and the *Declaration of Matthew S. Wild*, executed on February 5, 2014 [Docket No. 280] (the "Final Approval Declaration"); and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at hearings before this Court; and upon the record of the above-captioned chapter 15 cases (the "Chapter 15 Cases"), and after due deliberation thereon, and good cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and, to the extent applicable, the Settlement Parties consented to the Court hearing, determining, and entering appropriate orders and judgments regarding the relief sought in the Motion pursuant to 28 U.S.C. § 157(c)(2).

C. Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409 and this matter is core proceeding pursuant to 28 U.S.C § 157(b)(2).

D. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105(a), 363(b), 1501, 1507, 1520, and 1521(a)(7) of the

Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

E. The Preliminary Approval Order directed the substance, form, and manner by which the Settlement Class would be provided with notice of the certification of the Settlement Class for settlement purposes and the appointment of Class Counsel. The notice program included notice through ECF filing in the MDL to Settlement Class Members known to Class Counsel and publication of notice in *USA Today* and *Parade Magazine*. Proof that the publication conformed with the Preliminary Approval Order has been filed with the Court and appears at Docket Nos. 261 and 262. The notice constituted the most effective and best notice practicable under the circumstances and constituted due and sufficient notice for all purposes to all potential Settlement Class Members and therefore satisfied Bankruptcy Rule 7023(c)(2) and the minimum due process requirements of the Constitution of the United States. No further or other notice is required in connection with the Motion.

F. The Court finds that the Settlement Class is (i) so numerous that joinder of all members is impracticable; (ii) there are questions of law and fact common to the Settlement Class; (iii) the claims and defenses of the Named Plaintiffs are typical of the claims and defenses of the Settlement Class; and (iv) the Named Plaintiffs have and will fairly and adequately protect the interests of the Settlement Class. The Court finds that the questions of law and fact common to the Settlement Class predominate over any questions that affect members of the Settlement Class individually. In addition, the Court finds that a class action is superior to other available methods for fairly and efficiently adjudicating the issues underlying the MDL. Pursuant to Bankruptcy Rule 7023(a) and (b)(3), the Court certifies the following Settlement Class on a final basis for settlement purposes only:

> All purchasers of packaged ice (a) who purchased packaged ice in the Claims States indirectly from any of the defendants in the MDL, including the Debtors, or their subsidiaries or affiliates (including all predecessors thereof) at any time during the Settlement Class Period, and (b) whose claims are within the scope of the Proof of Claim or claims asserted against any of the Debtors or their former employees in the MDL.
>
> Excluded from the Settlement Class are any governmental entities and defendants in the MDL, including their parents, subsidiaries, predecessors, or successors, defendants' alleged co-conspirators, and the Released Parties.

G. Pursuant to Bankruptcy Rule 7023(g), the Court appointed Class Counsel as counsel to the Settlement Class in the Preliminary Approval Order.

H. Publication of the Final Approval Notice in *USA Today* and *Parade Magazine*, service through ECF filing in the MDL of the Final Approval Notice on all Settlement Class members known to Class Counsel, and maintenance of a website by the Claims Administrator where the materials related to the Settlement Agreement shall be available (in addition to the websites of Class Counsel and the Monitor where those materials will also be available) constitute the best notice practicable under the circumstances, as well as valid, due, and sufficient notice to all persons entitled thereto. The Final Approval Notice and the Final Long Form Notice comply fully with the requirements of Bankruptcy Rule 7023 and the minimum due process requirements of the Constitution of the United States.

I. The injunction, release, and exculpation provisions set forth in the Settlement Agreement constitute good-faith compromises and settlements of the matters covered thereby. Such compromises and settlements are made in exchange for valuable consideration and: (a) are in the best interests of the Debtors, their creditors, and other parties in interest; (b) are fair, equitable, and reasonable; and (c) are integral elements of the Settlement Agreement.

J. Based upon the Thirteenth and Fourteenth Reports, and the Preliminary Approval Declaration and the Final Approval Declaration, and the evidence adduced at the hearing to consider the Motion, the Settlement Agreement and its terms are the result of vigorous, good-faith, arm's-length negotiations between the Settlement Parties and is the result of the Debtors' and the Monitor's exercise of sound business judgment.

K. Based upon the facts and circumstances of the Canadian Proceeding and the Chapter 15 Cases, as well as the Thirteenth and Fourteenth Reports and the Preliminary Approval Declaration and the Final Approval Declaration, the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate within the meaning of Bankruptcy Rules 7023 and 9019, and are in the best interests of the Debtors, their creditors, and other parties in interest.

L. The Settlement Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

M. After considering (i) the complexity, expense, and likely duration of the litigation; (ii) the reaction of the class to the settlement; (iii) the stage of the proceedings and the amount of informal discovery completed (*i.e.*, Class Counsel's factual investigation and consultations with experts); (iv) the risks of establishing liability; (v) the risks of establishing damages; (vi) the risks of maintaining class action through the trial; (vii) the ability of the defendants to withstand a greater judgment; (viii) the range of reasonableness of the settlement fund in light of the best possible recovery; and (ix) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation; as well as the maturity

of the underlying substantive issues, as measured by experience in adjudicating individual actions, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and outcome of claims by the direct purchaser class; the right to opt out of the settlement; the reasonableness of the attorneys' fees provision; and the procedure for processing individual claims under the settlement, the Court finds that the Settlement is fair, reasonable, and adequate to the Settlement Class.

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. The Motion is granted to the extent set forth herein.

2. Pursuant to sections 105(a), 363, 1501, 1507, 1520, and 1521 of the Bankruptcy Code and Bankruptcy Rules 7023 and 9019, the Settlement Agreement, a copy of which is annexed hereto as Exhibit A, is approved.

3. Pursuant to Bankruptcy Rule 7023(b)(3), the Court certifies the following Settlement Class on a final basis for settlement purposes only:

> All purchasers of packaged ice (a) who purchased packaged ice in the Claims States indirectly from any of the defendants in the MDL, including the Debtors, or their subsidiaries or affiliates (including all predecessors thereof) at any time during the Settlement Class Period, and (b) whose claims are within the scope of the Proof of Claim or claims asserted against any of the Debtors or their former employees in the MDL.
>
> Excluded from the Settlement Class are any governmental entities and defendants in the MDL, including their parents, subsidiaries, predecessors, or successors, defendants' alleged co-conspirators, and the Released Parties.

4. The Proof of Claim shall be deemed to be reduced and allowed as a Proven Claim (as defined in the Claims Procedure Order) in an unliquidated amount not to exceed the Maximum Settlement Amount.

5. The Final Approval Notice, substantially in the form annexed hereto as Exhibit B, is hereby approved. The manner of service and publication of the Final Approval Notice described in paragraphs 5 and 6 hereof satisfy applicable Bankruptcy Rules.

6. Within three (3) business days after the date hereof, the Settlement Parties shall: (a) post the Final Approval Notice and Final Long Form Notice on the respective websites of the Monitor, the Claims Administrator, and the Debtors' noticing agent; (b) serve the Final Approval Notice via first-class mail on (i) the Office of the United States Trustee for the District of Delaware, (ii) certain parties to the MDL identified by Class Counsel, (iii) all persons entitled to receive notice pursuant to this Court's Form and Manner Order (as defined in the Motion) and Bankruptcy Rule 2002, (iv) the U.S. Attorney's Office for the District of Delaware, (v) the clerk of the MDL Court, and (vi) the attorneys general of all fifty (50) states; and (c) file the Final Approval Notice on the docket of the MDL for service through the MDL's electronic case filing system.

7. No later than thirty (30) calendar days after the date on which this U.S. Approval Order becomes a Final Order, the Final Approval Notice shall be published in *USA Today* and in *Parade Magazine*.

8. The Final Long Form Notice, substantially in the form attached hereto as Exhibit C, is hereby approved. The Final Long Form Notice shall be available on the website maintained by the Claims Administrator and the websites of Class Counsel and the Monitor.

I. CLAIMS SUBMISSION

9. All Settlement Class Members who did not submit a timely Opt-Out Form and who wish to receive a share of the Net Settlement Amount must submit a Claim Form in the manner provided herein **on or before June 12, 2014 at 4:00 p.m. (prevailing Eastern Time)** (the "Submission Deadline") shall be forever barred, estopped, and enjoined from asserting any Claim against the Maximum Settlement Amount Reserve, and the Monitor, the Debtors, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

10. The following procedures for the filing of Claim Forms are approved and shall apply:

(a) No Settlement Class Member may submit an Opt-Out Letter and a Claim Form, and if a Settlement Class Member submits both an Opt-Out Letter and a Claim Form, the Claim Form will govern.

(b) A Claim Form must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States; (iii) conform substantially to the Claim Form; (iv) be signed by the Settlement Class Member or if the Settlement Class Member is not an individual, by an authorized agent of the Settlement Class Member; and (v) be executed under penalty of perjury in accordance with 11 U.S.C. §§ 152 and 3571.

(c) A Claim Form shall be deemed timely filed only if the Claim Form is mailed and postmarked on or before the Submission Deadline, or if hand-delivered, or transmitted electronically via email or facsimile, so as to be **actually received** by the Claims Administrator on or before the Submission Deadline at:

Arctic Glacier Settlement Processing Center
c/o UpShot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231
Email: info@arcticindirectpurchaser.com
Fax: (720) 249-0882

(d) Any Settlement Class Member who wishes to receive acknowledgement of receipt of its Claim Form may (i) submit a copy of the Proof of Claim

Form and a self-addressed stamped envelope to the Claims Administrator along with the original Proof of Claim Form; (b) request email confirmation of receipt of its Claim Form; or (c) contact the Claims Administrator at (855) 226-8304.

11. Each Settlement Class Member may only submit one Claim Form and only one Claim Form may be submitted per household. Submission of more than one Claim Form per person and/or household shall render the second, and any subsequent, Claim Form invalid.

12. Each Settlement Class Member who submits a Claim Form shall be deemed to have submitted and consented to the jurisdiction of the Bankruptcy Court for the purposes of its Claim.

13. If a Settlement Class Member mistakenly transmits a Claim Form to Class Counsel on or prior to the Submission Deadline, Class Counsel shall promptly forward such Claim Form to the Claims Administrator, and such Claim Form shall be considered timely by the Claims Administrator.

14. The Claims Administrator shall provide a Settlement Class Member with a reasonable opportunity to correct an incomplete Claim Form. The Claim of any Settlement Class Member who, despite such opportunity, fails to correct an incomplete Claim Form will be invalid and such Settlement Class Member shall be forever barred, estopped, and enjoined from asserting such claim against the Maximum Settlement Amount Reserve, and the Monitor, the Debtors, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

15. Within ten (10) days after the Submission Deadline, the Claims Administrator shall provide a spreadsheet (the "Claims Report") to the Settlement Parties that contains information sufficient to determine: (a) which Claimants submitted a Claim Form; (b) which submitted Claim Forms are valid and timely and which are not; (c) which Claims the

Claims Administrator proposes to treat as Approved Claims; (d) the amount proposed to be paid to each Approved Claimant; and (e) which Claim Forms the Claims Administrator has denied and the reasons for the denial.

16. The Claims Administrator shall retain all Claim Forms (including, as applicable, the envelopes with the postmarks) received from Claimants, and shall make copies or the originals available to Class Counsel, the Monitor, and/or the Debtors upon request.

II. AUDIT AND CHALLENGE PROCEDURES

17. The Settlement Parties shall each have the right to audit the information provided in the Claim Forms submitted by each Claimant who submits a Claim or Claims in excess of $50.00, and to challenge the Claims Administrator's determinations regarding, among other things, approval or denial of each such Claim Form and the amount the Claims Administrator proposes to pay to each such holder of an Approved Claim.

18. Within fourteen (14) days of having received the Claim Forms and the Claims Report, the Settlement Parties shall meet and confer regarding any issues that the Monitor, the Debtors, or Class Counsel believe need to be raised with the Claims Administrator. If Class Counsel and counsel for the Debtors and for the Monitor cannot resolve these issues within twenty (20) days of having received the Claims Report, then Class Counsel, the Debtors, and/or the Monitor may provide written notice of their intent to audit the Claims Administrator's determinations with respect to a particular Claim or Claims.

19. All audits shall be presented to the Claims Administrator and the decision of the Claims Administrator shall be final; provided, however, that any dispute relating to the Claims Administrator's performance of its duties may be referred to this Court if it cannot be resolved consensually by the Settlement Parties and the Claims Administrator.

20. Class Counsel, the Debtors, and/or the Monitor may invoke their audit rights by providing written notice to each other and to the Claims Administrator. The notice shall identify the Claim or Claims that are the subject of the audit, and may be accompanied by supporting papers of no more than two (2) pages (excluding exhibits) for each Claim being audited. Within fourteen (14) days of receipt of the notice and supporting papers, the non-auditing party may submit a written response of no more than two (2) pages (excluding exhibits) for each Claim being audited. The Claims Administrator shall decide any audits presented to them within ten (10) days of final submission.

21. The time periods and page limits set forth in paragraph 17 hereof may be extended by agreement of the Settlement Parties without further order of this Court.

III. DISTRIBUTION OF THE NET SETTLEMENT AMOUNT

22. On the Payment Date, the Monitor is authorized to and shall distribute the Net Settlement Amount to the Claims Administrator for ultimate distribution to the holders of Approved Claims in accordance with Section 5.1.1 of the Settlement Agreement.

23. Within ten (10) days of receipt of the Net Settlement Amount, the Claims Administrator is authorized and directed to distribute the Net Settlement Amount to holders of Approved Claims in accordance with the terms of the Settlement Agreement and paragraph 21 hereof.

24. Only holders of Approved Claims shall be entitled to receive a share of the Net Settlement Amount. The Net Settlement Amount shall be allocated by the Claims Administrator as set forth below:

(a) A holder of an Approved Household Claim will receive a cash distribution in the amount of $6.00.

(b) A holder of an Approved Excess Claim will receive a cash distribution in the amount of $6.00 for the first ten bags and an additional cash distribution in the amount of $0.60 per bag thereafter.

(c) If the total amount claimed pursuant to (a) and (b) above, including any Incentive Awards that may be approved by separate Order, exceeds the Net Settlement Amount, the Approved Claims will be paid from the Net Settlement Amount on a pro rata basis per bag of ice claimed.

25. All distributions to Approved Claimants un-cashed for a period of one hundred twenty (120) days after the date of the distribution thereof shall be deemed unclaimed property and any entitlement of any Approved Claimant to such distributions shall be extinguished and forever barred. All such unclaimed property shall escheat in accordance with applicable law.

IV. RELEASES AND EXCULPATION

26. The releases set forth in Sections 9.1 and 9.2 of the Settlement Agreement are approved in all respects pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and shall be immediately effective on the Payment Date without further order or action on the part of the Court, any of the parties to such releases or any other party.

27. All persons releasing claims pursuant to Sections 9.1 and 9.2 of the Settlement Agreement are permanently enjoined from and after the Payment Date from taking any actions referred to in Section 9.1 against any Released Party.

28. None of the Exculpated Parties shall have or incur any liability to any holder of any Claim for any act or omission in connection with, or arising out of, the negotiation and execution of the Settlement Agreement, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto, and all prepetition activities leading to the promulgation of this Agreement except for any person's fraud or willful misconduct, as determined by a Final Order.

V. ADDITIONAL RELIEF

29. The failure to include any particular section or provision of the Settlement Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the Settlement Agreement and any related agreements be approved and authorized in their entirety.

30. The Settlement Parties shall be, and hereby are, authorized to take any and all actions and/or execute any and all documents as may be necessary or desirable to consummate the transactions contemplated by the Motion and the Settlement Agreement and/or to effectuate the terms of this Order.

31. The Settlement Parties are authorized to make nonsubstantive changes to the Final Approval Notice without further order of this Court, including, without limitation, changes to correct typographical and grammatical errors and to make any conforming changes prior to their distribution or publication.

32. The terms and provisions of the Settlement Agreement and this Order shall be binding on and inure to the benefit of the Debtors, the Monitor, Class Counsel, the Named Plaintiffs, the Settlement Class, the Debtors' creditors, and all other parties in interest, and any successors of any of those parties, including any trustee, examiner, or receiver appointed under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions shall likewise be binding on such trustee, examiner, or receiver and shall not be subject to rejection or avoidance by the Monitor, Class Counsel, the Debtors or their creditors, or any trustee, examiner, or receiver.

33. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary: (a) the terms of this Order shall be immediately effective and

enforceable upon its entry; and (b) the Debtors, the Monitor, and Class Counsel are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order.

34. To the extent there are any inconsistencies between the terms of this Order and the Settlement Agreement, the terms of this Order shall control.

35. In the event that the Payment Date does not occur, this Order shall be rendered null and void and shall be vacated upon notice to this court and without prejudice to the *status quo ante* rights of the Settlement Parties and/or members of the Settlement Class.

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

Dated: Wilmington, Delaware
_____, 2014

_____
THE HONORABLE KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Settlement Agreement

SETTLEMENT AGREEMENT

1.0 PREAMBLE

1.1 This settlement agreement (the "***Agreement***") is made and entered into as of the dates set forth below, individually and on behalf of: (a) the Settlement Class; (b) the Applicants; and (c) the Monitor (as each term is defined below). All monetary amounts described in this Agreement are denominated in United States dollars.

2.0 DEFINITIONS

2.1 "***Agreement***" has the meaning ascribed to such term in the preamble.

2.2 "***Applicant-Defendants***" means Arctic Glacier Income Fund, Arctic Glacier Inc., and Arctic Glacier International, Inc.

2.3 "***Applicants***" means collectively: (a) Arctic Glacier Income Fund; (b) Arctic Glacier Inc.; (c) Arctic Glacier International Inc.; (d) Arctic Glacier California Inc.; (e) Arctic Glacier Grayling Inc.; (f) Arctic Glacier Lansing Inc.; (g) Arctic Glacier Michigan Inc.; (h) Arctic Glacier Minnesota Inc.; (i) Arctic Glacier Nebraska Inc.; (j) Arctic Glacier Newburgh Inc.; (k) Arctic Glacier New York Inc.; (*l*) Arctic Glacier Oregon Inc.; (m) Arctic Glacier Party Time Inc.; (n) Arctic Glacier Pennsylvania Inc.; (o) Arctic Glacier Rochester Inc.; (p) Arctic Glacier Services Inc.; (q) Arctic Glacier Texas Inc.; (r) Arctic Glacier Vernon Inc.; (s) Arctic Glacier Wisconsin Inc.; (t) Diamond Ice Cube Company Inc.; (u) Diamond Newport Corporation; Glacier Ice Company, Inc.; (v) Ice Perfection Systems Inc.; (w) ICEsurance Inc.; (x) Jack Frost Ice Service, Inc.; (y) Knowlton Enterprises, Inc.; (z) Mountain Water Ice Company; (aa) R&K Trucking, Inc.; (bb) Winkler Lucas Ice and Fuel Company; (cc) Wonderland Ice, Inc.

2.4 "***Approval***" means the entry of an order or orders of the Canadian Court or the Bankruptcy Court, as the case may be, which orders shall have become Final Orders, authorizing or approving any transaction or action contemplated by this Agreement.

2.5 "***Approved Claimants***" means those Claimants whose Claims are Approved Claims.

2.6 "***Approved Claims***" means, collectively, Approved Household Claims and Approved Excess Claims.

2.7 "***Approved Excess Claims***" means those Claims of Settlement Class Members that have been approved for payment by the Claims Administrator (after the deadline for audits and challenges provided in Section 7.2 has expired or, if an audit is made, after all audits have been resolved in accordance with Section 7.2.6 of this Agreement) who (a) submitted a Claim Form by the Submission Deadline, (b) swear under oath that they (i) purchased at retail, (ii) during the Settlement Class Period, (iii) in one of the Claims States, (iv) more than ten bags of packaged ice, and (v) sold indirectly by one of the defendants in the MDL; and (c) submits proof, in form and substance satisfactory to the Claims Administrator, of such purchases of packaged ice exceeding ten bags.

2.8 "***Approved Household Claims***" means those Claims of Settlement Class Members that have been approved for payment by the Claims Administrator (after the deadline for audits and challenges provided in Section 7.2 has expired or, if an audit is made, after all audits have been resolved in accordance with Section 7.2.6 of this Agreement) who: (a) submitted a Claim Form by the Submission Deadline; and (b) swear under oath that they (i) purchased at retail, (ii) during the Settlement Class Period, (iii) in one of the Claims States, (iv) at least three bags of packaged ice, and (v) sold indirectly by one of the defendants in the MDL.

2.9 "***Attorneys' Fees***" means the amount of attorneys' fees related to the MDL, the Canadian Proceeding, and the Chapter 15 Cases to be requested by Class Counsel subject to Bankruptcy Court approval in accordance with Section 5.2 of this Agreement.

2.10 "***Attorneys' Costs***" means the documented and/or sworn to amount of costs and expenses related to the MDL, the Canadian Proceeding, and the Chapter 15 Cases to be requested by Class Counsel subject to Bankruptcy Court approval in accordance with Section 5.2 of this Agreement, including, without limitation to, costs incurred by Class Counsel (or its co-counsel) for U.S. and Canadian bankruptcy and insolvency counsel, expert fees, travel, filing fees, transcripts, document hosting, copying and printing, service of process and electronic research.

2.11 "***Bankruptcy Code***" means Title 11 of the United States Code, sections 101 *et seq*.

2.12 "***Bankruptcy Court***" means the United States Bankruptcy Court for the District of Delaware.

2.13 "***Canadian Approval Order***" means an order of the Canadian Court in the form attached as Exhibit A or otherwise in form and substance reasonably acceptable to the Settlement Parties, which shall (a) grant the Chief Process Supervisor the authority to enter into this Agreement subject to Bankruptcy Court Approval, (b) grant the Class Counsel Charge, and (c) provide for other relief to facilitate the implementation of the Settlement.

2.14 "***Canadian Court***" means the Manitoba Court of Queen's Bench of Winnipeg Centre.

2.15 "***Canadian Proceeding***" means insolvency proceedings commenced on February 22, 2012, concerning the Applicants and pending before the Canadian Court, File No. CI 12-01 76323.

2.16 "***Chief Process Supervisor***" means 70888418 Canada, Inc. (o/a Grandview Advisors).

2.17 "***CCAA Vesting Order***" means the *Amended and Restated Canadian Vesting and Approval Order* of the Canadian Court, dated June 21, 2012, as may be amended, extended, or modified.

2.18 "***CCAA***" means Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended.

2.19 "***Chapter 15 Cases***" means the proceeding concerning the Applicants, commenced by the Monitor in the Bankruptcy Court, pursuant to chapter 15 of the Bankruptcy Code, which Chapter 15 Cases are being jointly administered by the Bankruptcy Court under Case Number 12-10605.

2.20 "***Claim Amount***" means the aggregate amount of all Approved Claims.

2.21 "***Claim Form***" means the Claim Form substantially in the form attached hereto as Exhibit E or otherwise in form and substance reasonably acceptable to the Settlement Parties and approved by the Bankruptcy Court.

2.22 "***Claim***" means any claim, whether known or unknown, matured or contingent, liquidated or unliquidated, including any and all "claims," as such term is defined by section 101(5) of the Bankruptcy Code, held by a Settlement Class Member against any of the Applicants arising from or related to the purchase of packaged ice indirectly from a defendant in the MDL in the Claims States during the Settlement Class Period other than for personal injury or property damage.

2.23 "***Claimant***" means any Settlement Class Member who submits a valid and timely Claim Form in accordance with the terms and conditions of this Agreement and the U.S. Approval Order, as determined by the Claims Administrator in accordance with the terms of this Agreement and the U.S. Approval Order.

2.24 "***Claims Administrator***" means any person or entity to be agreed upon by the Settlement Parties that will perform the duties of, among other things: (a) arranging for publication of the Preliminary Approval Notice and Final Approval Notice; (b) tracking returned Claim Forms and Opt-Out Letters and providing periodic updates to the Settlement Parties; (c) notifying the Settlement Parties of determinations regarding submitted Claim Forms and Opt-Out Letters consistent with this Agreement; and (d) issuing any required tax paperwork.

2.25 "***Claims Officer Order***" means the *Order* of the Canadian Court, dated March 7, 2013, as may be amended, extended, or modified.

2.26 "***Claims Officer Recognition Order***" means the Bankruptcy Court's Order, dated May 7, 2013, as may be amended, extended, or modified, which recognized and gave full force and effect in the United States to the Claims Officer Order.

2.27 "***Claims Procedure Order***" means the *Claims Procedure Order* of the Canadian Court, dated September 5, 2012, as may be amended, extended, or modified.

2.28 "***Claims Procedure Recognition Order***" means the Bankruptcy Court's Order, dated September 14, 2012, as may be amended, extended, or modified, which recognized and gave full force and effect in the United States to the Claims Procedure Order.

2.29 "***Claims States***" means the following 16 states: (a) Arizona; (b) California; (c) Iowa; (d) Kansas; (e) Maine; (f) Massachusetts; (g) Michigan; (h) Minnesota; (i) Mississippi;

(j) Nebraska; (k) Nevada; (*l*) New Mexico; (m) New York; (n) North Carolina; (o) Tennessee; and (p) Wisconsin.

2.30 "***Class Counsel Charge***" means that certain charge to be sought from the Canadian Court in the Canadian Approval Order in favor of Class Counsel in the amount of $200,000.

2.31 "***Class Counsel***" means Wild Law Group PLLC.

2.32 "***Distribution Order***" means any order of the Canadian Court concerning the distribution of the Applicants' assets, including amounts currently held by the Monitor, to those persons or entities entitled to receive a share thereof, including, without implied limitation, the holders of Approved Claims.

2.33 "***Exculpated Parties***" means, collectively: (a) the Applicants and their respective directors, officers, employees, counsel, financial advisors, the Chief Process Supervisor, and other professionals who served in such capacity during the course of the Canadian Proceeding and/or the Chapter 15 Cases, each solely in its capacity as such; and (b) the Monitor and its directors, officers, employees, counsel, financial advisors, and other professionals who served in such capacity during the course of the Canadian Proceeding and/or the Chapter 15 Cases, each solely in its capacity as such.

2.34 "***Execution***" refers to the signing of this Agreement by all signatories hereto.

2.35 "***Final Approval Notice***" means the Claim Form as published, distributed, and/or otherwise made available by the Claims Administrator to Settlement Class Members known to Class Counsel in accordance with the terms of this Agreement.

2.36 "***Final Order***" means an order as to which the time to file an appeal, a motion for leave to appeal, a motion for reconsideration, or a petition for writ of certiorari has expired and no such appeal, motion, or petition is pending; or, if appealable, not subject to any stay in implementation pending appeal.

2.37 "***Incentive Awards***" means the awards requested by Class Counsel for any Named Plaintiff, as the Bankruptcy Court may approve.

2.38 "***Initial Order***" means the initial order of the Canadian Court, dated February 22, 2012, as may be amended, extended, or modified.

2.39 "***IPPs***" means the putative class of indirect purchasers who filed suits that were consolidated in the MDL.

2.40 "***Maximum Settlement Amount Reserve***" means the non-segregated reserve established and maintained by the Monitor, consisting of cash in the amount of the Maximum Settlement Amount, for the purpose of satisfying the cash distributions contemplated by this Agreement. The Class Counsel Charge is in addition to, and not included in, the Maximum Settlement Amount Reserve.

2.41 "***Maximum Settlement Amount***" means $3,950,000.

2.42 "***MDL***" means the multidistrict litigation captioned *In re Packaged Ice Antitrust Litig.*, No. 08-md-1952 (E.D. Mich.).

2.43 "***Monitor***" means Alvarez & Marsal Canada Inc., in its capacity as the Canadian Court-appointed Monitor and authorized "foreign representative" of the Applicants.

2.44 "***Named Plaintiffs***" means, collectively, Lawrence J. Acker, Rich Aust, Brian W. Buttars, Nathan Croom, Robert DeLoss, James Feeney, Lehoma Goode, Ian Groves, Beverly Herron, Ainello Mancusi, Ron Miastkowski, Brandi Palombella, Karen Prentice, Brian Rogers, Patrick Simasko, John Spellmeyer, Wilton E. Spencer, Jr., Wayne Stanford, Joe Sweeney, and Samuel Winnig.

2.45 "***Net Settlement Amount***" means the lesser of: (a) the Maximum Settlement Amount less the sum of (i) the Attorneys' Fees and Attorneys' Costs, (ii) the Notice and Administration Costs, and (iii) the Incentive Awards; and (b) the Claim Amount. In the event that a Distribution Order provides for a distribution in an amount less than the par value to a holder of a claim against one or more of the Applicants that is similarly situated in terms of priority of distribution to any Approved Claim, the Net Settlement Amount described in clause (a) or (b) hereof, as applicable, shall be reduced proportionately with respect to such Distribution Order.

2.46 "***Notice and Administration Costs***" means all reasonable and documented fees and expenses (other than Attorneys' Costs), including the reasonable fees and expenses of the Claims Administrator incurred in connection with this Agreement.

2.47 "***Opt-Out Letter***" refers to a written request to opt-out or exclude oneself from the Settlement sent by any Settlement Class Member who elects to be excluded from the Settlement Class.

2.48 "***Payment Trigger Date***" means the day on which all conditions to the Payment Trigger Date set forth in Section 8.2 of this Agreement have been satisfied or waived.

2.49 "***Payment Date***" shall have the meaning ascribed to such term in Section 8.1 of this Agreement.

2.50 "***Preliminary Approval Notice***" means the notice, substantially in the form attached hereto as Exhibit D or otherwise in form and substance reasonably acceptable to the Settlement Parties and approved by the Bankruptcy Court, to be published by the Claims Administrator in *Parade Magazine* and *USA Today*, and transmitted electronically or mailed to any Settlement Class Members known to Class Counsel, that, among other things: (a) describes and summarizes the terms and conditions of the Settlement and the Agreement, including the releases; (b) sets forth the proposed Attorneys' Fees and Attorneys' Costs; (c) sets forth the hearing dates and deadlines to opt out of the Settlement Class or to object to the Bankruptcy Court's Approval of this Agreement; and (d) sets forth the procedures for submission of objections and the Opt-Out Letter.

2.51 "***Preliminary Approval Order***" shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

2.52 "***Proof of Claim***" shall have the meaning ascribed to such term in Section 3.9 of this Agreement.

2.53 "***Released Claims***" shall have the meaning ascribed to such term in Section 9.1 of this Agreement.

2.54 "***Released Parties***" or "***Released Party***" means the Applicants, the Chief Process Supervisor, the Monitor, and any of their respective current or former direct or indirect subsidiaries, parent entities, affiliates, predecessors, insurers, agents, counsel, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders, including without implied limitation Frank Larson, Keith Corbin, and Gary Cooley, including their respective pension, profit sharing, savings, health, and other employee benefit plans, or personal or other assets of any nature, and those plans' respective trustees, administrators, and fiduciaries. For the sake of clarity, The Home City Ice Company, Reddy Ice Corporation, and Reddy Ice Holdings Inc. are not Released Parties.

2.55 "***Releasing Settlement Class Members***" has the meaning ascribed to such term in Section 9.1 of this Agreement.

2.56 "***Settlement Class Member***" means any member of the Settlement Class.

2.57 "***Settlement Class Period***" means the period of time from January 1, 2001 through and including March 6, 2008.

2.58 "***Settlement Class***" means the class to be certified by order of the Bankruptcy Court for settlement purposes in accordance with this Agreement and shall consist of all purchasers of packaged ice (a) who purchased packaged ice in the Claims States indirectly from any of the defendants in the MDL, including the Applicants, or their subsidiaries or affiliates (including all predecessors thereof) at any time during the Settlement Class Period, and (b) whose claims are within the scope of the Proof of Claim or claims asserted against any of the Applicants or their former employees in the MDL; provided, however, that the Settlement Class shall not include any governmental entities and defendants in the MDL, including their parents, subsidiaries, predecessors, or successors, defendants' alleged co-conspirators, and the Released Parties.

2.59 "***Settlement Parties***" means the Monitor, the Applicants, and Class Counsel on behalf of the proposed Settlement Class.

2.60 "***Settlement***" means the compromise and settlement of the Proof of Claim (including any other claim asserted by the Settlement Class against any of the Applicant-Defendants or their former employees in the MDL) as contemplated by this Agreement.

2.61 "***Submission Deadline***" means the date that is sixty (60) days from the date on which the Final Approval Notice is published or such other date as may be set by the Bankruptcy Court.

2.62 "***U.S. Approval Order***" means an order of the Bankruptcy Court in the form attached as Exhibit C or otherwise in form and substance reasonably acceptable to the Settlement Parties approving, on a final basis, each of the transactions contemplated by this Agreement.

2.63 "***U.S. Sale Order***" means the Bankruptcy Court's *Order Pursuant to Sections 105(a), 363, 1501, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014 (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief*, dated July 17, 2012, as may be amended, extended or modified.

3.0 RECITALS

3.1 In 2008 and thereafter, various putative class actions brought on behalf of the Named Plaintiffs against the Applicant-Defendants, as well as other defendants, were consolidated for pre-trial purposes in the MDL.

3.2 On June 1, 2009, the United States District Court for the Eastern District of Michigan, the court administering the MDL (the "***MDL Court***"), appointed Matthew S. Wild and Max Wild interim lead counsel for the IPPs and appointed John M. Perrin liaison counsel for that putative class.

3.3 On February 22, 2012, the Applicants commenced the Canadian Proceeding, and the Canadian Court entered the Initial Order, pursuant to the CCAA, providing various forms of relief thereunder, including the appointment of the Monitor.

3.4 On March 16, 2012, the Bankruptcy Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, pursuant to which the Bankruptcy Court recognized the Monitor as the "foreign representative" of the Applicants and granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, thereby extending during the pendency of these Chapter 15 Cases a stay of all proceedings, including the MDL, against or concerning property of the Applicants located within the territorial jurisdiction of the United States and its current and former officers, directors and employees.

3.5 Subsequent to the commencement of the Canadian Proceeding and the Chapter 15 Cases, Class Counsel was concerned that Canadian law appeared to preclude class action treatment of its claims against the Applicant-Defendants in the MDL as part of the Canadian Proceeding. As such, the Applicants and Class Counsel agreed to a novel approach: that the claims against the Applicant-Defendants in the MDL could be pursued under United States law before a United States lawyer who would decide the claim under United States law. The Canadian Court agreed that such a lawyer, experienced in United States antitrust and class-action law, would be appointed as "Special Claims Officer" to hear and decide such claims. This approach preserved the IPPs' rights to establish their

claims in the Canadian Proceeding, which led to the Settlement embodied in this Agreement.

3.6 On June 21, 2012, the Canadian Court entered the CCAA Vesting Order, pursuant to which the Canadian Court authorized and approved a sale of substantially all of the Applicants' assets free and clear of all Claims and Encumbrances (as defined in the CCAA Vesting Order) to the Purchaser (as defined in the CCAA Vesting Order). On July 17, 2012, the Bankruptcy Court entered the U.S. Sale Order recognizing and giving full force and effect in the United States to the CCAA Vesting Order.

3.7 On September 5, 2012, the Canadian Court entered the Claims Procedure Order (a) establishing procedures for the submission of claims against the Applicants and their directors, officers, and trustees, and (b) setting a bar date for the filing of such claims of October 31, 2012. On September 14, 2012, the Bankruptcy Court entered the Claims Procedure Recognition Order.

3.8 On March 7, 2013, the Canadian Court entered the Claims Officer Order, which, among other things, supplemented the Claims Procedure Order by empowering the Claims Officers (as defined in the Claims Officer Order) with the authority to adjudicate and determine questions of fact and law concerning the validity and value of disputed claims that cannot be resolved consensually. On May 7, 2013, the Bankruptcy Court entered the Claims Officer Recognition Order.

3.9 The Monitor has received a timely proof of claim dated November 5, 2012 submitted by Class Counsel on behalf of the IPPs (together with the Notice of Dispute described in Section 3.12 hereof, the "***Proof of Claim***"), which asserts an unsecured claim in the estimated amount of "at least $463,577,602" against the Applicant-Defendants.

3.10 In accordance with the Claims Procedure Order, the Monitor issued a comprehensive Notice of Revision or Disallowance (as defined in the Claims Procedure Order), dated January 24, 2013, which disallowed the Proof of Claim in its entirety.

3.11 On January 30–31, 2013, the Settlement Parties participated in a mediation with Justice George Adams, one of Canada's preeminent mediators. This Settlement has resulted from arms-length, good-faith negotiations that began with the January 2013 mediation.

3.12 The Monitor received a timely Notice of Dispute (as such term is defined in the Claims Procedure Order) from Class Counsel on behalf of the IPPs on March 4, 2013.

3.13 The Applicants and the Monitor, despite their belief that the claims asserted in the MDL and the Proof of Claim are meritless and that neither the Applicant-Defendants nor any of the Applicants have any liability of any kind to the Named Plaintiffs or to the members of the class or classes, including, without implied limitation, the Settlement Class the Named Plaintiffs purport to represent, have nevertheless agreed to enter into this Agreement to avoid risk of litigation, further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to resolve the Proof of Claim and facilitate the ultimate resolution of the Canadian Proceeding and the Chapter 15 Cases and the distribution of amounts currently being held by the Monitor on behalf of the Applicants.

3.14 Class Counsel has conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Proof of Claim, including analysis of evidence adduced during its investigation and through certain discovery and of the applicable law with respect to the claims asserted against the Applicant-Defendants, as well as the potential defenses thereto.

3.15 Based upon its investigation, and the circumstances surrounding the MDL and the Canadian Proceeding, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable and adequate to the Named Plaintiffs and the Settlement Class Members, and in their best interests, and has agreed to settle the Claims set out in the Proof of Claim pursuant to the terms and provisions of this Agreement, after considering (a) the benefits that the Named Plaintiffs and the Settlement Class Members will receive from the resolution of the Proof of Claim as against the Applicant-Defendants, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Agreement.

4.0 PRELIMINARY APPROVAL

4.1 As soon as practicable after the Canadian Court's entry of the Canadian Approval Order and execution of this Agreement by each of the Settlement Parties, the Monitor, the Applicants, and Class Counsel shall file a joint motion with the Bankruptcy Court requesting entry of an order, in the form attached as Exhibit B or otherwise in form and substance reasonably acceptable to the Settlement Parties (the "***Preliminary Approval Order***"): (a) recognizing the Canadian Approval Order, (b) incorporating Bankruptcy Rule 7023 pursuant to Bankruptcy Rule 9014 into the Chapter 15 Proceeding to consider the Settlement; (c) scheduling a hearing to consider (i) whether the Settlement is fair, reasonable and adequate as to the Settlement Class, and (ii) approval of the Agreement under sections 363 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019; (d) approving forms of notice and manner of service and/or publication of the Preliminary Approval Notice; (e) approving Class Counsel as counsel for the Settlement Class; (f) certifying the Settlement Class as a conditional settlement class pursuant to Bankruptcy Rule 7023; (g) approving the procedures for submission of Opt-Out Letters and/or objections; (h) approving the Claim Form; and (i) approving the engagement of the Claims Administrator.

5.0 TERMS OF SETTLEMENT

5.1 Subject to entry of the U.S. Approval Order, and the other terms and conditions of this Agreement, the Settlement Parties agree that in consideration for the settlement of the Proof of Claim in accordance with this Agreement, any and all Claims of the Settlement Class against the Applicants and the Monitor, and the dismissal with prejudice of the MDL against the Applicants and all former employees of the Applicants, (a) the Proof of Claim shall be deemed to be reduced and allowed as a Proven Claim (as defined in the Claims Procedure Order) in an unliquidated amount not to exceed the Maximum Settlement Amount; and (b) the Settlement Parties shall seek the Class Counsel Charge from the Canadian Court. Only the Net Settlement Amount shall be available for distribution to holders of Approved Claims.

5.1.1 Only holders of Approved Claims shall be entitled to receive a share of the Net Settlement Amount. The Net Settlement Amount shall be allocated as set forth below:

(i) A holder of an Approved Household Claim will receive a cash distribution in the amount of $6.00.

(ii) A holder of an Approved Excess Claim will receive a cash distribution in the amount of $6.00 for the first ten bags and an additional cash distribution in the amount of $0.60 per bag thereafter.

(iii) Class Counsel may request, and the Monitor and the Applicants shall not oppose such request, that, subject to the Bankruptcy Court's approval, each Named Plaintiff be paid an Incentive Award of $1,000. The Incentive Awards shall be included as part of the Maximum Settlement Amount.

(iv) If the total amount claimed pursuant to Sections 5.1.1(i), (ii), and (iii) above exceeds the Net Settlement Amount, the Approved Claims will be paid from the Net Settlement Amount on a pro rata basis per bag of ice claimed.

5.2 Class Counsel may apply to the Bankruptcy Court for an award of the Attorneys' Fees and/or Attorneys' Costs. The motion to consider the Bankruptcy Court's approval of the award of the Attorneys' Fees and/or Attorneys' Costs shall be returnable on the same date as the motion to consider the Bankruptcy Court's entry of the U.S. Approval Order. The Applicants and the Monitor agree not to oppose Class Counsel's application for an award of Attorneys' Fees in an amount equal to 33 and 1/3% or less of the Maximum Settlement Amount, plus Attorneys' Costs not to exceed $350,000. The Monitor and the Applicants shall not oppose any request of Class Counsel that (a) it be paid the approved Attorneys' Fees and Attorneys' Costs and (b) the Incentive Awards be paid, both as soon as practicable after the date on which each of the U.S. Approval Order, the Distribution Order, and the order approving Class Counsel's application for Attorneys' Fees, Attorneys' Costs, and Incentive Awards become a Final Order.

5.2.1 The Parties agree that the Bankruptcy Court's approval of any request for Attorneys' Fees, Attorneys' Costs, or Incentive Awards (or the Canadian Court's approval of the Class Counsel Charge and the Bankruptcy Court's recognition thereof) is not a condition precedent or subsequent to this Agreement, which shall be subject to implementation in accordance with this Agreement independent of all other transactions contemplated hereby, and is to be considered by the Bankruptcy Court separately from the fairness, reasonableness, adequacy, and good faith of this Agreement. Any order or proceeding relating to the application by Class Counsel of an award for Attorneys' Fees and Attorneys' Costs or for Incentive Awards shall not operate to terminate, cancel, or otherwise affect the enforceability of this Agreement.

5.2.2 Class Counsel agree that they are responsible for allocating the approved Attorneys' Fees and Attorneys' Costs among themselves and any other counsel that may have any other agreement with them. If a lien is asserted, the Monitor will tender the Attorneys' Fees and Attorneys' Costs award to the Bankruptcy Court and shall thereafter be released from any liability, claim, and/or obligation related to those payments. Class Counsel warrant and represent that there are no liens on the amounts to be paid for Attorneys' Fees and Attorneys' Costs pursuant to the terms of this Agreement and that no assignments of the Attorneys' Fees and Attorneys' Costs to be paid pursuant to this Agreement have been made or attempted. Class Counsel agree to defend, indemnify and hold harmless the Applicants and the Monitor from any liability resulting from a breach of these representations and/or any lien or assignment.

5.3 The Claims Administrator shall be engaged to perform, among other tasks, the duties described in Section 2.24 of this Agreement. The Monitor shall pay the Notice and Administration Costs from the Maximum Settlement Amount Reserve to the Claims Administrator.

5.3.1 Payments to the Claims Administrator for Notice and Administration Costs shall be made from the Maximum Settlement Amount Reserve on or before fifteen (15) days of submission of an invoice and any requested or required documentation to the Monitor, provided that the Monitor does not dispute the reasonableness of any of the requested Notice and Administration Costs.

5.3.1.1 In the event the Payment Date does not occur, any Notice and Administration Costs already incurred by the Claims Administrator may be paid in accordance with Section 5.3.1 of this Agreement.

5.3.1.2 Any dispute relating to the Claims Administrator's performance of its duties under this Agreement may be referred to the Bankruptcy Court if it cannot be resolved consensually by the Settlement Parties and the Claims Administrator.

5.3.1.3 The Claim Administrator shall regularly and accurately report to the Settlement Parties, in written form when requested, on the substance of the work performed.

5.3.2 Each recipient of any monies paid pursuant to this Agreement shall be responsible for any taxes associated with the monies received by each respective recipient.

5.3.3 The payments made on account of Approved Claims pursuant to this Agreement are being made for settlement purposes only and shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement.

5.3.4 Class Counsel shall defend, indemnify and hold harmless the Monitor and the Applicants from any and all liabilities, claims, obligations, causes of action, or other debts for taxes, fees, costs and/or assessments resulting from or related to Class Counsel's failure to timely pay taxes, interest, fees or penalties owed by it.

6.0 NOTICES REGARDING SETTLEMENT, CLAIM FORMS, AND OPT-OUT

6.1 The Claims Administrator shall cause the Preliminary Approval Notice and the Final Approval Notice to be published in *Parade Magazine* and *USA Today* in accordance with the Preliminary Approval Order and the U.S. Approval Order.

6.2 The Settlement Parties agree that the Preliminary Approval Notice shall include a statement that Settlement Class Members may opt out of the Settlement but may not be able to proceed individually against the Applicants absent having filed a claim in accordance, and otherwise having complied in all other respects, with the Claims Procedure Order, absent a further order of the Canadian Court.

6.3 The Preliminary Approval Notice, the Final Approval Notice, and other materials (if any) as agreed to by the Settlement Parties and approved by the Bankruptcy Court shall also be available on a website to be set up by the Claims Administrator, on the website of Class Counsel, and on the Monitor's website. Settlement Class Members shall be able to access the settlement documents and download a copy of the Claim Form from the websites, which the Settlement Class Member can then send to the Claims Administrator prior to the Submission Deadline.

7.0 CLAIMS SUBMISSION, AUDIT AND CHALLENGE, AND DISTRIBUTIONS

7.1 The Settlement Parties agree to use reasonable best efforts to obtain the Bankruptcy Court's approval of the following procedures governing the submission of Claim Forms.

7.1.1 Settlement Class Members must submit their completed Claim Form to the Claims Administrator on or before the Submission Deadline. Settlement Class Members that fail to submit a completed Claim Form on or before the Submission Deadline shall be forever barred, estopped, and enjoined from asserting any Claim against the Maximum Settlement Amount Reserve, and the Monitor, the Applicants, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

7.1.2 All Claim Forms shall be transmitted to the Claims Administrator in a manner to be provided by the Claims Administrator.

7.1.3 The Claim Forms shall be executed under penalty of perjury in accordance with 11 U.S.C. §§ 152 and 3571.

7.1.4 Each Settlement Class Member may only submit one Claim Form and only one Claim Form may be submitted per household. Submission of more than one

Claim Form per person and/or household shall render the second, and any subsequent, Claim Form invalid.

7.1.5 Each Settlement Class Member who submits a Claim Form shall be deemed to have submitted to the jurisdiction of the Bankruptcy Court for the purposes of its Claim.

7.1.6 The Claims Administrator shall only accept Claim Forms sent by mail, hand delivery, facsimile, telecopy, electronic mail transmission or other electronic means. The Claims Administrator shall not accept or honor any Claim Forms that are not postmarked or delivered (if by means other than mail) by a date that is on or before the Submission Deadline.

7.1.7 If a Settlement Class Member mistakenly transmits a Claim Form to Class Counsel on or prior to the Submission Deadline, Class Counsel shall promptly forward such Claim Form to the Claims Administrator, and such Claim Form shall be considered timely by the Claims Administrator.

7.1.8 No Settlement Class Member may submit an Opt-Out Letter and a Claim Form, and if a Settlement Class Member submits both an Opt-Out Letter and a Claim Form, the Claim Form will govern.

7.1.9 The Claims Administrator shall provide a Settlement Class Member with a reasonable opportunity to correct an incomplete Claim Form. The Claim of any Settlement Class Member who, despite such opportunity, fails to correct an incomplete Claim Form will be invalid and such Settlement Class Member shall be forever barred, estopped, and enjoined from asserting such claim against the Maximum Settlement Amount Reserve, and the Monitor, the Applicants, and their respective property shall be forever discharged and released from any and all indebtedness or liability with respect to such Claim.

7.1.10 The Claims Administrator shall set up a toll free number to respond to inquiries from Settlement Class Members, and to provide a mechanism by which Settlement Class Members can verify that the Claims Administrator has received a particular Claim Form.

7.1.11 Within ten (10) days after the Submission Deadline, the Claims Administrator shall provide a spreadsheet to the Settlement Parties that contains information sufficient to determine: (a) which Claimants submitted a Claim Form; (b) which submitted Claim Forms are valid and timely and which are not; (c) which Claims the Claims Administrator proposes to treat as Approved Claims; (d) the amount proposed to be paid to each Approved Claimant; and (e) which Claim Forms the Claims Administrator has denied and the reasons for the denial.

7.1.12 The Claims Administrator shall retain all Claim Forms (including, as applicable, the envelopes with the postmarks) received from Claimants, and shall make copies or the originals available to Class Counsel, the Monitor, and/or the Applicants upon request.

7.2 The Settlement Parties agree to use reasonable best efforts to obtain the Bankruptcy Court's approval of audit and challenge procedures regarding the Claims Administrator's determination concerning the allowability of any Claim.

7.2.1 The Settlement Parties shall each have the right to audit the information provided in the Claim Forms submitted by each Claimant who submits a Claim or Claims in excess of $50.00, and to challenge the Claims Administrator's determinations regarding, among other things, approval or denial of each such Claim Form and the amount the Claims Administrator proposes to pay to each such holder of an Approved Claim. If applicable, the Settlement Party requesting the audit shall bear the cost of such audit.

7.2.2 Within fourteen (14) days of having received the Claim Forms and the spreadsheet referenced in Section 7.1.11 of this Agreement from the Claims Administrator, the Settlement Parties shall meet and confer regarding any issues that the Monitor, the Applicants, or Class Counsel believe need to be raised with the Claims Administrator. The Settlement Parties agree to use good-faith efforts to resolve any disputes. If Class Counsel and counsel for the Applicants and for the Monitor cannot resolve these issues within twenty (20) days of having received the spreadsheet contemplated by Section 7.1.11 of this Agreement from the Claims Administrator, then Class Counsel, the Applicants, and/or the Monitor may provide written notice of their intent to audit the Claims Administrator's determinations with respect to a particular Claim or Claims.

7.2.3 Audits shall be presented to the Claims Administrator. Subject to Section 5.3.1.2 of this Agreement, the decision of the Claims Administrator shall be final.

7.2.4 Class Counsel, the Applicants, and/or the Monitor may invoke their audit rights under this Agreement by providing written notice to each other and to the Claims Administrator. The notice shall identify the Claim or Claims that are the subject of the audit, and may be accompanied by supporting papers of no more than two (2) pages (excluding exhibits) for each Claim being audited.

7.2.5 Within fourteen (14) days of receipt of the notice and supporting papers, the non-auditing party may submit a written response of no more than two (2) pages (excluding exhibits) for each Claim being audited.

7.2.6 The Claims Administrator shall decide any audits presented to them within ten (10) days of final submission.

7.2.7 The time periods and page limits set forth in this Section 7 may be extended by agreement of the Settlement Parties without further order of the Canadian Court or of the Bankruptcy Court.

7.2.8 Notice of audits, any paperwork submitted in support of, or in response to, any audit, and any decision by the Claims Administrator shall be served by email or United States Mail.

7.2.9 Funds identified to be paid to any Settlement Class Member whose Claim has been audited shall not be paid until the Claims Administrator has decided the audit in question pursuant to Section 7.2.6 of this Agreement.

7.3 The Settlement Parties agree to use reasonable best efforts to obtain the Bankruptcy Court's approval of the following procedures concerning the distribution of the Net Settlement Amount to holders of Approved Claims.

7.3.1 The amount of the Net Settlement Amount that an Approved Claimant is eligible to receive under this Settlement on account of an Approved Claim shall be determined by the Claims Administrator in accordance with Section 5.1.1 of this Agreement.

7.3.2 All distributions to Approved Claimants under this Agreement un-cashed for a period of one hundred twenty (120) days after distribution thereof shall be deemed unclaimed property and any entitlement of any Approved Claimant to such distributions shall be extinguished and forever barred. All such unclaimed property shall escheat in accordance with applicable law.

8.0 CONDITIONS TO PAYMENT TRIGGER DATE

8.1 As soon as reasonably practicable after the occurrence of the Payment Trigger Date, the Settlement Parties shall confer and select a business day (the "***Payment Date***") on which the Monitor shall (a) distribute the Net Settlement Amount to the Claims Administrator for ultimate distribution to the holders of Approved Claims in accordance with Section 5.1.1 of this Agreement, and (b) pay the amount secured by the Class Counsel Charge to Class Counsel. Any amounts in the Maximum Settlement Amount Reserve not disbursed in accordance with this Agreement shall be retained by the Monitor for distribution in accordance with a Distribution Order.

8.2 The occurrence of the Payment Trigger Date is subject to:

(i) The Canadian Approval Order shall have been entered and shall have become a Final Order;

(ii) The Preliminary Approval Order shall have been entered and shall have become a Final Order;

(iii) The U.S. Approval Order shall have been entered and shall have become a Final Order;

(iv) All Claims of Settlement Class Members who submitted Claim Forms have been resolved by the Claims Administrator (after the deadline for audits and challenges provided in Section 7.2 has expired or, if an audit is made, after all audits have been resolved in accordance with Section 7.2.6 of this Agreement);

(v) The Claims Administrator has provided information, reasonably satisfactory to the Monitor and the Applicants, concerning the Claim Amount; and

(vi) The Canadian Court shall have entered a Distribution Order, which Distribution Order shall have become a Final Order.

8.3 With the exception of the condition set forth in Section 8.2(vi), which cannot be waived, the requirement that a particular condition be satisfied may be waived in whole or part, without notice and a hearing, by the Settlement Parties. The failure of any Settlement Party to assert the non-satisfaction of any such conditions shall not be deemed a waiver of any other rights hereunder, and each such right shall be deemed an ongoing right that may be asserted or waived (as set forth herein) at any time or from time to time.

9.0 COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

9.1 Upon the Payment Date, for good and valuable consideration set forth in this Agreement, the receipt and sufficiency (as applicable) of which is hereby acknowledged, regardless of whether they are entitled to participate for any reason expressed or contemplated by this Agreement in the distribution of the Net Settlement Proceeds, the Named Plaintiffs, Class Counsel, and the Settlement Class Members, other than those who submit timely and valid Opt-Out Letters (collectively, the "***Releasing Settlement Class Members***"), shall irrevocably and permanently release and shall be deemed to have forever released, waived, and discharged all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities, including, without limitation, any claims for any such loss such holder may suffer, have suffered or be alleged to suffer as a result of (a) the facts and circumstances relating to the MDL and/or the Proof of Claim, (b) the Applicants commencing the Canadian Proceeding or the Chapter 15 Cases, or (c) the Agreement being consummated, whether such claims are liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Payment Date in any way relating to any Released Party arising out of or related to clauses (a) through (c) immediately above, including, without implied limitation, all claims for attorneys' fees and costs incurred by Releasing Settlement Class Members and by Class Counsel in connection with the MDL and the Proof of Claim, and the settlement thereof (collectively, the "***Released Claims***"). For the sake of clarity, the Released Claims shall not include claims for the purchase of packaged ice directly from one or more of the defendants in the MDL, personal injury or property damage. The Releasing Settlement Class Members specifically acknowledge that this Release reflects a compromise of disputed claims.

9.2 In exchange for the good and valuable consideration set forth herein, the Releasing Settlement Class Members waive any and all rights or benefits that they as individuals or the classes may now have in connection with the Released Claims under the terms of Section 1542(a) of the California Civil Code (or similar statute or common law rule in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH DEBTOR.

9.3 None of the Exculpated Parties shall have or incur any liability to any holder of any Claim for any act or omission in connection with, or arising out of the negotiation and execution of this Agreement, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto, and all prepetition activities leading to the promulgation of this Agreement except for any person's fraud or willful misconduct, as determined by a Final Order.

10.0 MUTUAL FULL COOPERATION

10.1 Upon the terms and subject to the conditions set forth in this Agreement, each of the Settlement Parties agrees promptly to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

10.2 Subject to Section 7.2.7 of this Agreement, if Class Counsel, the Monitor, or the Applicants cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Bankruptcy Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by another Settlement Party.

11.0 STATEMENT OF NO ADMISSION

11.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of the Applicants, and the Applicants deny any and all liability. Nor shall this Agreement constitute an admission by the Applicants as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the MDL or the Proof of Claim. Likewise, nothing in this agreement shall be construed or deemed an admission by Class Counsel with regards to the validity of any of the Applicants' defenses or affirmative defenses. Each of the Settlement Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant risks, inconvenience, and expenses.

11.2 This Agreement, and all related documents, and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in any judicial, arbitral, administrative,

investigative, or other court, tribunal, forum, or proceeding, or other litigation for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

11.3 The Claim Forms, Opt-Out Letters, the calculations by the Claims Administrator, and any other evidence produced or created by any Settlement Class Member in connection with the claims resolutions procedures pursuant to this Settlement, and any actions taken by the Monitor and/or the Applicants in response to such Claim Forms, Opt-Out Letters, the calculations by the Claims Administrator, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute, an admission by the Monitor or the Applicants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

11.4 In the event that this Agreement is not approved by the Bankruptcy Court, or otherwise fails to become effective and enforceable, or is terminated or voided, neither the Applicants nor the Monitor shall be deemed to have waived, limited, or affected in any way any of their respective objections or defenses to the Proof of Claim. Nor shall Class Counsel be deemed to have waived, limited, or adversely affected in any way its Proof of Claim or its objection to the merit of the opposition thereto.

12.0 VOIDING OF OR WITHDRAWAL FROM THE AGREEMENT

12.1 The Settlement Parties shall each have the option to withdraw from this Agreement and declare this Agreement null and void if: (a) the Settlement is construed by any Settlement Party or any court or tribunal of competent jurisdiction (including the Canadian Court or the Bankruptcy Court) in a fashion that would require the Monitor or the Claims Administrator to pay or reserve more than the Maximum Settlement Amount; or (b) any court or tribunal of competent jurisdiction (including the Canadian Court or the Bankruptcy Court) enters any order or decree inconsistent with any of the material terms of this Agreement. Any order respecting Class Counsel's requested Attorneys' Fees and Attorneys' Costs, the Class Counsel Charge, Notice and Administration Costs, or Incentive Awards shall not be a basis for Class Counsel to withdraw. The withdrawing party shall provide notice to the other Settlement Parties that it is exercising its right to withdraw from this Agreement within fourteen (14) days of actual knowledge of an event which triggers its right to withdraw.

12.2 In the event that (a) the Preliminary Approval Order is not entered; (b) Approval of this Agreement is not granted, (c) any of the Settlement Parties withdraws from this Agreement pursuant to Section 12.1 hereof, or (d) this Agreement is terminated for any reason prior to substantial consummation of the transactions contemplated hereby, neither the Agreement, nor any documents related to this Settlement or negotiations leading to the Settlement, shall have any probative value and may not be used or referred to as evidence for any purpose. The Settlement Parties shall each have such rights as existed before their execution of this Agreement.

12.3 Should the Bankruptcy Court (or the Canadian Court, as applicable) decline to approve this Agreement in any material respect, except for approval of the award of Class

Counsel's Attorney Fees and Costs, Notice and Administration Costs, the Class Counsel Charge, or any Incentive Award, neither the Monitor nor the Claims Administrator shall have any obligation to make any payment under this Agreement, and in the event that any party has made any such payment, such monies shall be returned promptly to the Monitor (minus any Notice and Administration Costs already reasonably incurred by the Claims Administrator).

13.0 PARTIES' AUTHORITY

13.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Settlement Parties to its terms and conditions.

14.0 NO PRIOR ASSIGNMENTS

14.1 The Settlement Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

15.0 NOTICES

15.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (a) the date given, if given by hand delivery; (b) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (c) the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given or permitted under this Agreement shall be addressed as follows, or to such other addresses as any Settlement Party may give notice:

15.1.1 To the Settlement Class:

Wild Law Group PLLC
121 Reynolda Village, Suite M
Winston-Salem, North Carolina 27106
Attn: Matthew S. Wild

- with copies to -

Wild Law Group PLLC
98 Distillery Road
Warwick, New York 10990
Attn: Max Wild

- and -

Wild Law Group PLLC
319 N. Gratiot Avenue

Mt. Clemens, Michigan 48043
Attn: John M. Perrin

15.1.2 To the Applicants:

Jones Day
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Attn: Paula W. Render

- with copies to -

McCarthy Tetrault LLP
TD Bank Tower, Suite 5300
Box 48
66 Wellington Street West
Toronto, Ontario, Canada M5K 1E6
Attn: Kevin P. McElcheran

15.1.3 To the Monitor:

Alvarez & Marsal Canada Inc.
200 Bay Street, Suite 2900
Toronto, Ontario, Canada M5J 2J1
Attn: Richard Morawetz & Melanie MacKenzie

- with copies to -

Osler, Hoskin & Harcourt LLP
100 King Street West, Suite 6100, P.O. Box 50
Toronto, Ontario, Canada M5X 1B8
Attn: Marc Wasserman & Jeremy Dacks

- and -

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
Attn: Marc Abrams, Mary K. Warren & Jeffery Korn

- and -

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Attn: Matthew B. Lunn

16.0 DOCUMENTS AND DISCOVERY

16.1 Subject to any order made in the MDL, within sixty (60) days after the later of the Payment Trigger Date or the final resolution of the MDL, Class Counsel shall take steps necessary to destroy or erase all documents and data produced in connection with the MDL and the Proof of Claim and which are currently in Class Counsel's possession, custody or control, including documents and data in the possession, custody or control of their retained experts and consultants. Class Counsel shall certify to the Monitor their good faith efforts to comply with this provision.

17.0 MISCELLANEOUS PROVISIONS

17.1 Construction. The Settlement Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Settlement Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Agreement.

17.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.

17.3 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Settlement Parties and approved by the Canadian Court and the Bankruptcy Court. This Settlement may not be discharged except by performance in accordance with its terms or by an order of the Canadian Court and the Bankruptcy Court.

17.4 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Proof of Claim and the MDL, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Settlement Party or such Settlement Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Settlement Party against whom such waiver is to be enforced.

17.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Settlement Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

17.6 Class Counsel and Settlement Class Representative Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Agreement. The Final Approval Notice will provide all Settlement Class Members with a summary of the Settlement, and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit an Opt-Out Letter, the Final Approval

Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

17.7 Non-Disparagement. Except as may be necessary or appropriate (a) to advance or defend against subsequent litigation between one or more of the Settlement Parties, or (b) for Class Counsel to pursue claims arising from the facts and circumstances giving rise to the MDL against any person or entity other than the Applicant-Defendants and the other relevant Released Parties, each Settlement Party agrees that it will not make or be complicit in the public disclosure of any disparaging or defamatory comment regarding any other Settlement Party, any other Settlement Party's successors or assigns, or any other Settlement Party's current or former directors, officers, employees, or shareholders in any respect.

17.8 Counterparts. This Agreement may be executed by facsimile signature, pdf signature, and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Settlement Parties.

17.9 Bankruptcy Court Jurisdiction. The Settlement Parties may apply to the Bankruptcy Court to resolve any dispute concerning the interpretation or performance of any of the terms and conditions of this Agreement.

17.10 Applicable Law. This Agreement shall be governed by New York law without regard to its choice of law or conflicts of law principles or provisions.

Signature Pages Follow

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned duly authorized representative of the Settlement Class as of the date set forth below.

Dated: October 9, 2013

WILD LAW GROUP PLLC

Matthew S. Wild, Esq.
A Member of the Firm
121 Reynolda Village, Suite M
Winston-Salem, North Carolina 27106

- and -

WILD LAW GROUP PLLC
Max Wild, Esq.
98 Distillery Road
Warwick, New York 10990

- and -

WILD LAW GROUP PLLC
John M. Perrin, Esq.
27735 Jefferson Avenue
Saint Clair Shores, Michigan 48081

Counsel to the Settlement Class

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned duly authorized representative of the Applicants as of the date set forth below.

Dated: October 22, 2013

7088418 CANADA INC. o/a
GRANDVIEW ADVISORS

Bruce Robertson
President
39 Wynford Drive
Don Mills, Ontario, Canada M3C 3K5

In its Capacity as the Canadian Court-Appointed Chief Process Supervisor

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned duly authorized representative of the Monitor as of the date set forth below.

Dated: October 22, 2013

ALVAREZ & MARSAL CANADA INC.

Richard Morawetz
Senior Vice President
200 Bay Street, Suite 2900
Toronto, Ontario, Canada M5J 2J1

In its Capacity as the Canadian Court-Appointed Monitor and Authorized Foreign Representative of the Applicants

EXHIBIT B

Final Approval Notice

In re Arctic Glacier International Inc., et al.
Case No. 12-10605 (KG) (U.S. Bankruptcy Court, D. Del.) Jointly Administered

IF YOU BOUGHT PACKAGED ICE FROM A RETAILER
Your Rights May Be Affected By A Court Approved Settlement

This Notice is provided pursuant to Bankruptcy Rule 7023 and an Order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). A class action lawsuit alleges that Arctic Glacier, Home City Ice, and Reddy Ice (the "Companies") conspired to fix and raise the price consumers paid for Packaged Ice. "Packaged Ice" is ice sold in bags. On February [__], 2014, the Bankruptcy Court approved a settlement of a bankruptcy proof of claim based on the lawsuit against one of the Companies, Arctic Glacier (the "Settlement"). Home City Ice and Reddy Ice previously agreed to separate settlements.

Pursuant to the Settlement, you may be entitled to a cash payment if you bought from a retailer Packaged Ice made by Arctic Glacier, Home City Ice, or Reddy Ice (or any of their subsidiaries or predecessors) between January 1, 2001 and March 6, 2008 (the "Settlement Period") in any of the following states: AZ, CA, IA, KS, ME, MA, MI, MN, MS, NE, NV, NM, NY, NC, TN, and/or WI (collectively, the "Claims States"). Copies of the Order approving the Settlement, as well as notices describing in full the procedures for submission of a Claim Form may be obtained, free of charge, at www.arcticindirectpurchaser.com; www.icesettlements.com; or www.amcanadadocs.com/articglacier/pages/index.aspx.

TO RECEIVE A CASH PAYMENT, YOU MUST COMPLETE, SIGN, AND RETURN THE CLAIM FORM PROVIDED BELOW, WHICH MUST BE POSTMARKED NO LATER THAN *JUNE 12, 2014* OR HAND DELIVERED, OR SUBMITTED VIA EMAIL OR FACSIMILE, SO THAT IT IS ACTUALLY RECEIVED NO LATER THAN *JUNE 12, 2014 AT 4:00 P.M. (PREVAILING EASTERN TIME)* AT THE ADDRESS BELOW.

CLAIM FORM

PLEASE SUBMIT YOUR COMPLETED CLAIM FORM ONLINE AT WWW.ARCTICINDIRECTPURCHASER.COM OR MAIL IT TO:

Arctic Glacier Settlement Processing Center
c/o UpShot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231
Email: info@arcticindirectpurchaser.com
Toll Free: 855-226-8304
Fax: 720-249-0882

FAILURE TO SUBMIT YOUR COMPLETED CLAIM FORM BY *JUNE 12, 2014 AT 4:00 P.M. (PREVAILING EASTERN TIME)* OR TO PROVIDE THE REQUIRED INFORMATION REQUESTED BELOW MAY RESULT IN THE REJECTION OF YOUR CLAIM. YOU MAY SUBMIT ONLY ONE CLAIM FORM PER HOUSEHOLD.

1. Print Your Name: _____
2. E-Mail: _____
3. Street Address: _____

   City, State and Zip Code: _____
4. Phone Number: (___ ___ ___) ___ ___ ___-___ ___ ___ ___

5. Please state the number of bags of Packaged Ice made by either Arctic Glacier, Home City Ice or Reddy Ice that you purchased from a retailer in the Claims States during the Settlement Period. Please check only one box.

☐ I purchased 3 or more bags; **or**

☐ I purchased more than 10 bags and have proof of purchase – specify total number of bags: _____

TO RECEIVE $6.00 you must claim purchase of three or more bags.

TO RECEIVE MORE THAN $6.00 you must claim purchases of more than ten bags, and provide proof of purchase for each bag in excess of ten bags. You will receive $6.00 for the first ten bags and $0.60 for each additional bag. **Failure to include Proof of Purchase for Claims in excess of ten bags will limit your recovery to $6.00. Submission of false or fraudulent claims will result in the Claim being rejected in its entirety**.

I hereby certify, under penalty of perjury, in connection with this federal action, that I purchased the above-referenced number of bags of Packaged Ice stated above.

Dated: ___ ___ / ___ ___ / ___ ___ ___ ___ Signature of Claimant: _____

QUESTIONS? VISIT WWW.ARCTICINDIRECTPURCHASER.COM OR CALL 855-226-8304

EXHIBIT C

Final Long Form Notice

NOTICE

TO: ALL INDIVIDUALS AND BUSINESSES WHO PURCHASED PACKAGED ICE FROM A RETAILER (*E.G.*, SUPERMARKET, GROCERY STORE OR GAS STATION) MADE BY ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL INC., ARCTIC GLACIER INCOME FUND, THE HOME CITY ICE COMPANY, REDDY ICE CORPORATION, OR REDDY ICE HOLDINGS, INC., OR THEIR SUBSIDIARIES OR AFFILIATES (INCLUDING ALL PREDECESSORS THEREOF) (COLLECTIVELY, THE "DEFENDANTS") AT ANY TIME DURING THE PERIOD FROM JANUARY 1, 2001 TO MARCH 6, 2008.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED BY A SETTLEMENT OF A PROOF OF CLAIM BASED UPON A CLASS ACTION LAWSUIT.

THIS NOTICE (THIS "NOTICE") IS GIVEN PURSUANT TO RULE 7023 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND AN ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (THE "BANKRUPTCY COURT"). THE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF A SETTLEMENT THAT HAS BEEN REACHED BETWEEN ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC., AND ARCTIC GLACIER INTERNATIONAL INC. (THE "APPLICANT DEFENDANTS") AND A CONDITIONAL SETTLEMENT CLASS (THE "SETTLEMENT CLASS") OF INDIRECT PURCHASERS OF ICE SOLD IN BAGS ("PACKAGED ICE") MANUFACTURED BY THE APPLICANT DEFENDANTS.

THE APPLICANT DEFENDANTS DENY LIABILITY IN THIS MATTER BUT HAVE AGREED TO SETTLE TO AVOID THE COSTS AND RISKS ASSOCIATED WITH FURTHER LITIGATION.

MEMBERS OF THE SETTLEMENT CLASS ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THE MATTERS DESCRIBED IN THIS NOTICE.

MEMBERS OF THE SETTLEMENT CLASS SHOULD NOT CONSTRUE THE CONTENTS OF THIS NOTICE AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. EACH PERSON READING THIS NOTICE SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS WITH RESPECT TO ANY SUCH MATTERS CONCERNING THIS NOTICE AND THE SETTLEMENT AGREEMENT DESCRIBED HEREIN.

CAPITALIZED TERMS USED BUT NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASCRIBED TO THOSE TERMS IN THE SETTLEMENT AGREEMENT.

THE MULTIDISTRICT LITIGATION

In 2008 and thereafter, various putative class actions brought by indirect purchasers of Packaged Ice against the Applicant Defendants, as well as other Defendants, were consolidated for pre-trial purposes in the multidistrict litigation (the "MDL") captioned *In re Packaged Ice Antitrust Litig.*, No. 07-md-1952 (E.D. Mich.). On June 1, 2009, the United States District Court for the Eastern

District of Michigan, the court administering the MDL (the "MDL Court"), appointed Matthew S. Wild and Max Wild as interim lead counsel and appointed John M. Perrin as liaison counsel for the putative indirect purchaser class. On September 15, 2009, certain plaintiffs filed an Amended Class Action Complaint against the Defendants (the "Action"). Plaintiffs allege that the Defendants violated the antitrust laws by conspiring to raise, fix, maintain or stabilize the price of Packaged Ice and/or allocate markets and customers. Plaintiffs further allege that as a result of the conspiracy, they and other indirect purchasers of Packaged Ice have been injured by paying more for Packaged Ice than they would have paid in the absence of the illegal conduct. Plaintiffs seek damages and injunctive relief together with reimbursement of costs and an award of attorneys' fees. On May 25, 2011, certain plaintiffs filed a Consolidated Class Action Complaint. On December 12, 2011, the MDL Court granted in part, and denied in part, Defendants' motions to dismiss the Consolidated Class Action Complaint. Certain plaintiffs (who were denied the ability to join the Action) then filed suits in various federal courts, which were transferred to the MDL.

Defendants deny plaintiffs' allegations. At this time, neither plaintiffs nor Defendants have proven their claims or defenses. The MDL Court has expressed no opinion as to whether plaintiffs' allegations are correct or whether Defendants have engaged in any wrongdoing.

ARCTIC GLACIER IS IN BANKRUPTCY

On February 22, 2012, the Applicant Defendants (together with each of their affiliates, the "Debtors") commenced a proceeding under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and the Court of Queen's Bench Winnipeg Centre (the "Canadian Court") entered an initial order, pursuant to the CCAA, providing various forms of relief thereunder, including a stay of proceedings and claim enforcement against the Debtors and their property. Also on February 22, 2012, Alvarez & Marsal Canada Inc., in its capacity as the Canadian Court-appointed monitor and authorized foreign representative of the Debtors (the "Monitor") commenced proceedings (the "Chapter 15 Cases") for the Debtors under chapter 15 of title 11 of the United States Code (the "Bankruptcy Code") by filing with the Bankruptcy Court verified petitions on behalf of each of the Debtors.

On February 23, 2012, the Bankruptcy Court entered the *Order Granting Provisional Relief* [Docket No. 28], providing for, among other things, a stay of all proceedings and claim enforcement against or concerning property of the Debtors located within the territorial jurisdiction of the United States, including the MDL. On March 16, 2012, the Bankruptcy Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70], pursuant to which the Bankruptcy Court granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, thereby extending during the pendency of the Chapter 15 Cases a stay of all proceedings and claim enforcement against or concerning property of the Debtors located within the territorial jurisdiction of the United States, including the MDL.

Following the completion of a Sale and Investor Solicitation Process, on June 21, 2012, the Canadian Court entered the *Sale Approval and Vesting Order* (as amended and restated, the "CCAA Vesting Order"), pursuant to which the Canadian Court authorized and approved a sale of substantially all of the Debtors' assets free and clear of all Claims and Encumbrances (as

defined in the CCAA Vesting Order) to the Purchaser (as defined in the CCAA Vesting Order). On July 17, 2012, the Bankruptcy Court entered the *Order Pursuant to Sections 105(A), 363, 1501, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014 (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 126] recognizing and giving full force and effect in the United States to the CCAA Vesting Order. The Purchaser is not a party to the Settlement nor is it affiliated with the Debtors; however, the Purchaser continues to operate the Debtors' business under the Arctic Glacier trade name.

On September 5, 2012, the Canadian Court entered the *Claims Procedure Order* (the "Claims Procedure Order") (a) establishing procedures for the submission of claims against the Debtors and their directors, officers, and trustees, and (b) setting a bar date of October 31, 2012. On September 14, 2012, the Bankruptcy Court entered an Order [Docket No. 166] (the "Claims Procedure Recognition Order") recognizing and giving full force and effect in the United States to the Claims Procedure Order.

In accordance with the Claims Procedure Order and the Claims Procedure Recognition Order, the Monitor has received a timely proof of claim, dated November 5, 2012, submitted by the Wild Law Group PLLC ("Class Counsel") on behalf of the Settlement Class (the "Proof of Claim"), which asserts an unsecured claim in the estimated amount of "at least $463,577,602" against the Applicant Defendants.

Following the filing of the Proof of Claim, the Monitor, the Debtors, and Class Counsel, on behalf of the Settlement Class (as defined below), negotiated the terms of a settlement agreement (the "Settlement Agreement") resolving the issues raised by the Proof of Claim (including any other claim asserted by the Settlement Class against any of the Applicant Defendants or their former employees in the MDL). On February 27, 2014, the Bankruptcy Court approved the Settlement Agreement as being fair, reasonable, and adequate as to all members of the Settlement Class.

Copies of the pleadings described above can be obtained, free of charge, at www.kccllc.net/ArcticGlacier and www.amcanadadocs.com/arcticglacier.

THE BANKRUPTCY COURT CERTIFIED A CONDITIONAL SETTLEMENT CLASS

The Settlement Class is defined as:

> All purchasers of Packaged Ice who purchased Packaged Ice in Arizona, California, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, Tennessee, and/or Wisconsin indirectly from any of the Defendants in the MDL, including the Debtors, or their subsidiaries or affiliates (including all

predecessors thereof) at any time between January 1, 2001 and March 6, 2008.

Excluded from the Settlement Class are any governmental entities and Defendants in the MDL, including their parents, subsidiaries, predecessors, or successors, Defendants' alleged co-conspirators, and the Released Parties.

TERMS OF THE SETTLEMENT AGREEMENT AND SUBMISSION OF CLAIM FORMS

UNLESS YOU SUBMITTED A VALID AND TIMELY OPT-OUT LETTER, YOU ARE BOUND BY THE TERMS OF THE SETTLEMENT AGREEMENT. IN ORDER TO RECEIVE PAYMENT ON ACCOUNT OF YOUR CLAIM, YOU MUST SUBMIT A CLAIM FORM BY THE DEADLINE AND IN THE MANNER SET FORTH BELOW.

The Settlement Agreement provides for cash payments in an amount not to exceed $3,950,000 (the "Maximum Settlement Amount") in exchange for the Settlement Class' release of certain claims against Arctic Glacier and certain other parties. Members of the Settlement Class who purchased at least three (3) bags of Packaged Ice and submit a "Claim Form" may be entitled to receive cash in the amount of $6.00 for claiming purchase of three or more bags of Packaged Ice. To receive more than $6.00, members of the Settlement Class must claim purchases of more than ten bags of Packaged Ice, with proof of purchase for each bag of Packaged Ice exceeding 10 bags. Holders of approved claims will receive $6.00 for the first ten bags and $0.60 for each additional bag. Payment amounts may be reduced proportionally under certain circumstances detailed in Sections 2.45 and 5.1.1(iv) of the Settlement Agreement. Copies of the Settlement Agreement can be obtained, free of charge, at www.arcticindirectpurchaser.com.

ONLY HOLDERS OF "APPROVED CLAIMS" (AS SUCH TERM IS DEFINED IN THE SETTLEMENT AGREEMENT) WILL BE ENTITLED TO RECEIVE A CASH AWARD.

A. Deadline for Filing a Claim Form

By Order of the Bankruptcy Court, dated February [__], 2014, the last date and time for all members of the Settlement Class to assert a Claim on account of the issues raised by the Indirect Purchaser Claim is **June 12, 2014 at 4:00 p.m. (prevailing Eastern Time)** (the "Submission Deadline").

A Claim Form shall be deemed timely filed only if the Claim Form is mailed and postmarked on or before the Submission Deadline, or if hand-delivered, or transmitted electronically via email or facsimile, so as to be **actually received** by the Claims Administrator on or before the Submission Deadline at:

Arctic Glacier Settlement Processing Center
c/o UpShot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231
Email: info@arcticindirectpurchaser.com

Fax: (720) 249-0882

A Claim Form must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States; (iii) conform substantially to the Claim Form; (iv) be signed by the Settlement Class Member or if the Settlement Class Member is not an individual, by an authorized agent of the Settlement Class Member; and (v) be executed under penalty of perjury in accordance with 11 U.S.C. §§ 152 and 3571.

Any Settlement Class Member who wishes to receive acknowledgement of receipt of its Claim Form may (i) submit a copy of the Proof of Claim Form and a self-addressed stamped envelope to the Claims Administrator along with the original Proof of Claim Form; (b) request email confirmation of receipt of its Claim Form; or (c) contact the Claims Administrator at (855) 226-8304.

CLAIM FORMS MAY BE OBTAINED FREE OF CHARGE AT WWW.ARCTICINDIRECTPURCHASER.COM; WWW.WILDLAWGROUP.COM; OR WWW.AMCANADADOCS.COM/ARCTICGLACIER; OR BY CONTACTING THE CLAIMS ADMINISTRATOR AT:

Arctic Glacier Settlement Processing Center
c/o UpShot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231
Email: info@arcticindirectpurchaser.com
Toll Free: (855) 226-8304
Fax: (720) 249-0882

B. Consequences of Failure to File a Claim Form

ALL SETTLEMENT CLASS MEMBERS WHO DID NOT SUBMIT A VALID AND TIMELY OPT-OUT LETTER AND FAIL TO SUBMIT A VALID AND TIMELY CLAIM FORM SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING ANY CLAIM AGAINST THE MAXIMUM SETTLEMENT AMOUNT RESERVE, AND THE MONITOR, THE DEBTORS, AND THEIR RESPECTIVE PROPERTY SHALL BE FOREVER DISCHARGED AND RELEASED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO SUCH CLAIM.

C. The Settlement Agreement Contains Releases of Claims

Section 9.1 of the Settlement Agreement provides that:

> *Upon final consummation of the Settlement Agreement, Settlement Class Members, other than those who submit timely and valid Opt-Out Letters, (collectively, the "Releasing Settlement Class Members") shall irrevocably and permanently release and shall be deemed to have forever released, waived, and discharged all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities, including, without limitation,*

any claims for any such loss such holder may suffer, have suffered or be alleged to suffer as a result of (a) the facts and circumstances relating to the MDL and/or the Proof of Claim, (b) the Applicants commencing the Canadian Proceeding or the Chapter 15 Cases, or (c) the Agreement being consummated, whether such claims are liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Payment Date in any way relating to any Released Party arising out of or related to clauses (a) through (c) immediately above, including, without implied limitation, all claims for attorneys' fees and costs incurred by Releasing Settlement Class Members and by Class Counsel in connection with the MDL and the Proof of Claim, and the settlement thereof (collectively, the "Released Claims"). For the sake of clarity, the Released Claims shall not include claims for the purchase of packaged ice directly from one or more of the Defendants in the MDL, personal injury or property damage.

Section 2.54 of the Settlement Agreement defines "Released Parties" as:

The Applicants, 70888418 Canada, Inc. (o/a Grandview Advisors), the Monitor, and any of their respective current or former direct or indirect subsidiaries, parent entities, affiliates, predecessors, insurers, agents, counsel, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders, including, without implied limitation, Frank Larson, Keith Corbin, and Gary Cooley, including their respective pension, profit sharing, savings, health, and other employee benefit plans, or personal or other assets of any nature, and those plans' respective trustees, administrators, and fiduciaries. For the sake of clarity, The Home City Ice Company, Reddy Ice Corporation, and Reddy Ice Holdings Inc. are not Released Parties.

Section 9.2 of the Settlement Agreement provides that:

In exchange for the good and valuable consideration set forth herein, the Releasing Settlement Class Members waive any and all rights or benefits that they as individuals or the classes may now have in connection with the Released Claims under the terms of Section 1542(a) of the California Civil Code (or similar statute or common law rule in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH DEBTOR.

IF YOU DID NOT SUBMIT A VALID AND TIMELY OPT-OUT LETTER, YOU ARE BOUND BY THE RELEASES UPON FINAL CONSUMMATION OF THE SETTLEMENT AGREEMENT.

D. The Settlement Agreement Contains Exculpations

Section 9.3 of the Settlement Agreement provides that:

> *None of the Exculpated Parties shall have or incur any liability to any holder of any Claim for any act or omission in connection with, or arising out of the negotiation and execution of this Agreement, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto, and all prepetition activities leading to the promulgation of this Agreement except for any person's fraud or willful misconduct, as determined by a Final Order.*

Section 2.33 of the Settlement Agreement defines "Exculpated Parties" as:

> *(a) the Applicants and their respective directors, officers, employees, counsel, financial advisors, the 70888418 Canada, Inc. (o/a Grandview Advisors), and other professionals who served in such capacity during the course of the Canadian Proceeding and/or the Chapter 15 Cases, each solely in its capacity as such; and (b) the Monitor and its directors, officers, employees, counsel, financial advisors, and other professionals who served in such capacity during the course of the Canadian Proceeding and/or the Chapter 15 Cases, each solely in its capacity as such.*

E. There Are Conditions to the Consummation of the Settlement Agreement

The Settlement Agreement must be fully consummated before you are legally bound by it. As described more fully in Section 8 of the Settlement Agreement, certain conditions must be satisfied before the Settlement Agreement is fully consummated:

(a) The U.S. Approval Order shall have been entered and shall have become a Final Order;

(b) All Claims of Settlement Class Members who submitted Claim Forms have been resolved by the Claims Administrator (after the deadline for audits and challenges

provided in Section 7.2 of the Settlement Agreement has expired or, if an audit is made, after all audits have been resolved in accordance with Section 7.2.6 of the Settlement Agreement);

(c) The Claims Administrator has provided information, reasonably satisfactory to the Monitor and the Applicants, concerning the Claim Amount; and

(d) The Canadian Court shall have entered a Distribution Order, which Distribution Order shall have become a Final Order.

ADDITIONAL INFORMATION

If you have questions concerning this Notice or the Action or would like copies of any of the documents referenced in this Notice, please contact:

Arctic Glacier Settlement Processing Center
c/o UpShot Services LLC
7808 Cherry Creek South Drive, Suite 112
Denver, CO 80231
Email: info@arcticindirectpurchaser.com
Toll Free: (855) 226-8304
Fax: (720) 249-0882