

1515 of title 11 of the United States Code (the “Bankruptcy Code”), seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code. 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, and (b) enforced in full the Initial Order on a permanent basis in the United States.

On June 21, the Canadian Court entered the CCAA Vesting Order, pursuant to which the Canadian Court authorized and approved the sale free and clear of all Claims and Encumbrances, except as otherwise set forth in the Purchase Agreement. On June 26, 2012, the Monitor filed the U.S. Sale Motion, requesting that this Court: (a) recognize and enforce the CCAA Vesting Order; (b) authorize and approve pursuant to section 363(f) of the Bankruptcy Code, the sale of the Debtors’ right, title, and interest in and to the Purchased Assets to the Purchaser, free and clear of all Interests, except as otherwise provided in the Purchase Agreement; (c) authorize and approve, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the Purchase Agreement); and (d) grant certain related relief, including payment of the Lender Claims.

On October 13, 2009, Arctic Glacier International, Inc. (“AGII”), one of the Debtors, and the Antitrust Division of the Department of Justice (“Antitrust Division”) entered into an agreement by which AGII pleaded guilty to one charge of market allocation in southeast Michigan and the Detroit, Michigan metropolitan area, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and agreed to pay a \$9,000,000 fine in installments over five (5) years, thereby settling all charges (the “Plea Agreement”). The Plea Agreement was accepted by the United

States District Court for the Southern District of Ohio on February 11, 2010, and its terms have been reflected in a judgment dated March 3, 2010, in case no. CR-1-09-149 (the “Judgment”).

As a result of the Judgment, pursuant to 18 U.S.C. Section 3613, the United States obtained a lien against all of the assets of AGII and the DOJ filed a notice of lien concerning the Judgment in Dakota County, State of Minnesota, on August 9, 2010 (the “Notice of Lien”). As of the Petition Date, AGII had not paid \$7,000,000 of the fine amount set forth in the Judgment (the “Unpaid Fine”).

The United States has been diligently negotiating with counsel for the Monitor and debtors’ counsel and the parties have reached agreement on all of the issues except one. The issue involves the level of participation of the United States in the process of the termination or modification of the Judgment upon payment by the Monitor of the Unpaid Fine.

ARGUMENT

As a result of the Plea Agreement, the District Court for the Southern District of Ohio sentenced AGII to a probation of five years which is reflected in the Judgment. The Judgment is an order of the District Court. The Judgment may be modified pursuant to 18 U.S.C. Section 3563(c) and Federal Rule of Criminal Procedure 32.1. Section 3563(c) provides that “The court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions to the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.” The relevant Federal Rule of Criminal Procedure, Rule 32.1, provides a mechanism for requesting a modification of the Court’s Order. In general, a hearing on the request for modification of the probation is not required if certain conditions are met. One of those conditions is that “an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object,

and has not done so”. The Monitor is seeking a representation from the United States that upon payment of the Unpaid Fine, the United States will affirmatively support and actively seek the modification of the debtor’s probation period. The United States objects to this request because it would represent a deviation from normal policy which the undersigned does not have the authority to approve. Moreover, this Court lacks jurisdiction to order the United States to take any action in a criminal proceeding.

The United States also objects to the provisions in Paragraph 23 of the proposed order approving the Sale Motion (U.S. Sale Order”). That paragraph provides that “Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary: (a) the terms of the U.S. Sale Order shall be immediately effective and enforceable upon its entry; (b) the Debtors, the Purchaser, and the Monitor are not subject to any stay in implementation, enforcement or realization of the relief granted in the U.S. Sale Order; and (c) the Debtors, the Purchaser, and the Monitor may, in their discretion and without further delay, take any action and perform any act authorized under the CCAA Vesting Order and/or the U.S. Sale Order.”

The United States objects to the proposed relief granted in paragraph 23 because it provides that the Sale Order shall be effective and enforceable immediately upon entry. By including this provision in the U.S. Sale Order, the appeal rights of the United States are being circumvented. Pursuant to Rules 6004(h), 6006(d) and 7062 of the Federal Rules of Bankruptcy Procedure, unless otherwise ordered by the Court, there is an automatic fourteen day stay imposed from the date of the entry of the order. Under the Monitor’s proposed language, if the United States is unable to immediately obtain a hearing before the appropriate Court to seek a stay, its appeal may be contended to be moot. Particularly in light of the fact that the appellant in

this case would be a government component, with a chain of command to be consulted, this unilateral ability of the debtor and the purchaser to truncate the stay period would be unfair and prejudicial to the United States.

WHEREFORE, the United States respectfully requests that the Court deny the relief requested in the Sale Motion to the extent of its limited objection and grant such other relief as the Court deems necessary and just.

Respectfully submitted,

CHARLES M. OBERLY, III
United States Attorney

By: /s/ Ellen W. Slight
ELLEN W. SLIGHTS
Assistant United States Attorney
Delaware State Bar No. 2782
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046
Attorneys for the United States

Dated: July 17, 2012

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

In Re:	:	
	:	Chapter 15
ARTIC GLACIER INTERNATIONAL INC.,:	:	
et al.,	:	Case No. 12-10605 (KG)
	:	
	:	(Jointly Adminstered)
Debtors in a Foreign Proceeding.	:	
	:	Hearing Date: July 17, 2012 at 10:00AM
	:	Objections Due: July 11, 2012, extended to July 17, 2012 at 9:00AM

CERTIFICATE OF SERVICE

I, Ellen Slights, an employee in the Office of the United States Attorney for the District of Delaware, hereby attest under penalty of perjury that on July 17, 2012, a copy of the **LIMITED OBJECTION BY THE UNITED STATES TO THE MONITOR'S U.S. SALE MOTION** was served electronically via the Court's CM/ECF system upon the parties registered to receive notice thereby, and upon the following individuals on the attached document via Facsimile:

/s/ Ellen Slights

Ellen Slights

FAX TRANSMISSION

UNITED STATES ATTORNEY'S OFFICE

THE NEMOURS BUILDING
1007 Orange Street, Suite 700,
Wilmington, Delaware 19899-2046
302-573-6277
Fax: 302-573-6431

DATE: **July 17, 2012**

TO:	Willkie Farr & Gallagher, LLP Attn: Marc Abrams, Mary K. Warren and Alex W. Cannon 787 Seventh Avenue New York, N.Y. 10019-6099, U.S.A. 212-728-8000	212-728-8111
	Osler Hoskin & Harcourt, LLP Attn: Marc Wasserman and Jeremy Dacks 100 King Street West 1 First Canadian Place Suite 6100, P.O. Box 50 Toronto ON M5X 1B8 416-362-2111	416-862-6666
	Young Conaway Stargatt & Taylor, LLP Attn: Robert S. Brady and Matthew P. Lunn Rodney Square 1000 North King Street Wilmington, DE 19801 302-571-6600	302-571-1253
	Jones Day Attn: Gregory M. Gordon and Daniel P. Winikka 2727 North Harwood Street Dallas, Texas 75201-1515 214-220-3939	214-969-5100
	McCarthy Tétrault, LLP Attn: Kevin P. McElcheran 66 Wellington Street West, Suite 5300 Toronto, Ontario M5K 1E6 416-362-1812 877-244-7711	416-868-0673

Ropes & Gray
Attn: Mark Bane and Darren Azman
1211 Avenue of the Americas
New York, NY 10036-8704
212 596 9000

212-596-9090

Stikeman Elliott, LLP
Attn: Elizabeth Pillon
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9
416-869-5500

416- 947-0866

FROM: Ellen W. Slights
Assistant United States Attorney

SUBJECT: In re
ARTIC GLACIER INTERNATIONAL, INC., et al
Chapter 15
Case No. 12-10605 (KG)

**PAGES: (including cover
page)**

CONTENTS:

LIMITED OBJECTION BY THE UNITED STATES TO THE MONITOR'S
SALE MOTION