

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC.,  
ARCTIC GLACIER INTERNATIONAL INC. AND THE ADDITIONAL  
APPLICANTS LISTED ON SCHEDULE "A" HERETO  
(COLLECTIVELY, "THE APPLICANTS")**

**ELEVENTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
MARCH 27, 2013**

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## 1.0 INTRODUCTION

- 1.1 Pursuant to an order of The Court of Queen's Bench (Winnipeg Centre) (the "**Court**") dated February 22, 2012 (the "**Initial Order**"), Alvarez & Marsal Canada Inc. was appointed as Monitor (the "**Monitor**") in respect of an application filed by Arctic Glacier Income Fund ("**AGIF**"), Arctic Glacier Inc., Arctic Glacier International Inc. and those entities listed on **Appendix "A"**, (collectively, and including Glacier Valley Ice Company L.P., the "**Applicants**") seeking certain relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The proceedings commenced by the Applicants under the Initial Order are referred to herein as the "**CCAA Proceedings**".
- 1.2 The Monitor has previously filed ten reports with this Honourable Court. Capitalized terms not otherwise defined in this report (the "**Eleventh Report**") are as defined in the orders previously granted by, or in the reports previously filed by the Monitor with, this Honourable Court by the Monitor.
- 1.3 The stay of proceedings set out in the Initial Order, as extended by subsequent orders, currently expires on June 14, 2013 (the "**Stay Period**").
- 1.4 In its Tenth Report dated March 5, 2013 (the "**Tenth Report**"), attached, without appendices, as **Appendix "B"**, the Monitor advised that, to the extent there are any relevant tax matters between the date of the Tenth Report and the expiry of the Stay Period, additional reports may be filed with the Court.
- 1.5 The purpose of this Eleventh Report is to provide an update in respect of certain tax matters.

1.6 Further information regarding these proceedings can be found on the Monitor's website at <http://www.alvarezandmarsal.com/arcticglacier>.

## **2.0 TERMS OF REFERENCE**

2.1 In preparing this Eleventh Report, the Monitor has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain former senior management of the Applicants ("**Senior Management**"). Although this information has been subject to review, the Monitor has not conducted an audit or otherwise attempted to verify the accuracy or completeness of any of the information of the Applicants. Accordingly, the Monitor expresses no opinion and does not provide any other form of assurance on or relating to the accuracy or completeness of any information contained in, or otherwise used to prepare, this Eleventh Report.

2.2 Certain of the information referred to in this Eleventh Report relates to an estimate of the Applicants' tax liabilities for 2012, including in respect of the Sale Transaction. The estimate of the tax liabilities was prepared by the Applicants' tax advisors relying on the Applicants' books and records up to the closing of the Sale Transaction. In addition, the Applicants' tax advisors relied on the statements of receipts and disbursements of the Applicants that were prepared by the Monitor and certain other information provided to the Applicants' tax advisors by the Monitor. The Monitor has not reviewed the books and records of the Applicants that were relied upon by the Applicants' tax advisors and expresses no opinion on the accuracy, completeness and reasonableness of such books and records. An examination or review of the information contained herein, including any financial forecasts and projections and procedures, in accordance with standards set by the Canadian Institute of Chartered Accountants, has not been performed.

2.3 The actual 2012 tax liabilities of the Applicants may be greater or less than the estimates of the 2012 tax liabilities of the Applicants as set out in this Eleventh Report, and such differences may be material. The tax liabilities set out in this Eleventh Report are estimates only, are subject to further revision and determination, and a final assessment by the relevant taxing authorities. Accordingly, the estimated tax liabilities are being disclosed in this Eleventh Report for information purposes only in the context of these CCAA Proceedings; the Monitor expresses no opinion and does not provide any assurance on or relating to their accuracy and such estimated tax liabilities should not be relied upon by any stakeholder, including creditors and current, former or prospective investors in the units of AGIF.

2.4 Unless otherwise stated, all monetary amounts contained in this Eleventh Report are expressed in United States dollars, which is the Applicants' common reporting currency.

### **3.0 UPDATE REGARDING TAX MATTERS**

3.1 As indicated in the Tenth Report, the Applicants retained KPMG LLP ("**KPMG**") to:

- i. assist in the preparation and filing of the Applicants' 2012 tax returns;
- ii. provide valuation services to estimate the fair market value of the consolidated U.S. operations of the Applicants at the time of the 2011 conversion of AGIF's outstanding convertible debentures in the aggregate principal amount of \$90.4 million into new units of AGIF (the "**Conversion**") and to allocate that fair market value to the Applicants' U.S. legal entities in order to determine the Applicants' ability to utilize certain U.S. tax losses; and

- iii. provide valuation services to determine the U.S. legal entities' fair market value at the closing of the Sale Transaction in order to complete the Applicants' U.S. tax returns, including the state tax filings.
- 3.2 Additional information that must be considered prior to the finalization of the Applicants' tax returns is described in the Tenth Report.
- 3.3 As reported in the Tenth Report, the deadline for filing requests for extensions to file U.S. corporate tax returns (the "**Extensions**") was March 15, 2013. For the Extensions to be valid, the taxpayer requesting the extension must also pay at least 90% of its tax obligations for the applicable tax year by March 15, 2013.
- 3.4 KPMG recently provided the Monitor with its estimated calculations of the Applicants' U.S. tax obligations for 2012, and estimated the Applicants' combined U.S. tax obligations to be approximately \$7.9 million (the "**U.S. Tax Estimate**"), comprising U.S. federal taxes of approximately \$4.6 million and U.S. state taxes of approximately \$3.3 million.
- 3.5 The federal component of the U.S. Tax Estimate was determined, in part, by applying tax losses that were calculated based on a preliminary valuation of the consolidated U.S. legal entities as at the date of the Conversion. The state component of the U.S. Tax Estimate was based on estimates of the fair market value of the individual U.S. legal entities as at the closing of the Sale Transaction. Certain expenses of the Applicants are being analyzed as to their deductibility for tax purposes by the U.S. Applicants. Accordingly, the Monitor cautions that the U.S. Tax Estimate is a preliminary estimate only, is subject to change once the U.S. tax returns have been finalized and assessed, and such change could be material. The Monitor expresses no opinion and does not provide

any assurance on or relating to the accuracy of the U.S. Tax Estimate and such U.S. Tax Estimate should not be relied upon by any stakeholder, including creditors and current, former or prospective investors in the units of AGIF.

- 3.6 The Extensions were filed with the applicable taxing authorities on March 15, 2013.
- 3.7 Due to the preliminary nature of the U.S. Tax Estimate, based on information provided by KPMG, and after consulting with KPMG and the Applicants, the Monitor remitted payments to the taxing authorities with whom the Extensions were filed totaling approximately \$9.3 million. The payment remitted reflects the fact that KPMG is continuing its work on the valuations and tax returns.
- 3.8 KPMG had also provided the Monitor with an estimated calculation of the Applicants' Canadian tax obligations for 2012 and in respect of the Sale Transaction. After taking into account tax losses available to the Canadian Applicants from prior years, KPMG estimated the corporate and trust tax obligations of the Canadian Applicants to be nil.
- 3.9 As set out in the Tenth Report, after filing the Extensions, the U.S. tax returns are due on September 15, 2013. KPMG has advised that it anticipates completing the U.S. tax returns on or about May 15, 2013, subject to completing the valuation of the U.S. Applicants on an entity by entity basis by April 1, 2013. KPMG has also advised that, while the Canadian trust return for AGIF is due on March 31, 2013 and the Canadian corporate tax return is due on June 30, 2013, it expects to complete the Canadian trust return by March 31, 2013 and the Canadian corporate tax return by the end of April 2013. The Tenth Report indicated that this corporate tax return was expected to be completed by March 31, 2013; however, based on the current status of its work, KPMG anticipates that it will be completed by the end of April 2013.



3.10 The Monitor continues to communicate with KPMG to assist in the characterization of the various types of professional fees and other expenses incurred by the Applicants, so that KPMG may confirm or revise as it considers necessary the U.S. Tax Estimate and the estimate of the Applicants' Canadian tax obligations and complete the Applicants' tax returns within the anticipated timeframe.

3.11 To the extent that any further relevant tax matters arise between the date of this Eleventh Report and the expiry of the Stay Period, the Monitor may file additional reports with the Court, serve such reports on the Service List maintained in these CCAA Proceedings and post such reports on the Monitor's website in respect of these CCAA Proceedings.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 27<sup>th</sup> day of March, 2013.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Arctic Glacier Income Fund,  
Arctic Glacier Inc., Arctic Glacier International Inc. and  
the other Applicants listed on Appendix "A".**



Per: Richard A. Morawetz  
Senior Vice President

# **APPENDIX “A”**

**List of Applicants**

Arctic Glacier California Inc.  
Arctic Glacier Grayling Inc.  
Arctic Glacier Lansing Inc.  
Arctic Glacier Michigan Inc.  
Arctic Glacier Minnesota Inc.  
Arctic Glacier Nebraska Inc.  
Arctic Glacier Newburgh Inc.  
Arctic Glacier New York Inc.  
Arctic Glacier Oregon Inc.  
Arctic Glacier Party Time Inc.  
Arctic Glacier Pennsylvania Inc.  
Arctic Glacier Rochester Inc.  
Arctic Glacier Services Inc.  
Arctic Glacier Texas Inc.  
Arctic Glacier Vernon Inc.  
Arctic Glacier Wisconsin Inc.  
Diamond Ice Cube Company Inc.  
Diamond Newport Corporation  
Glacier Ice Company, Inc.  
Ice Perfection Systems Inc.  
ICESurance Inc.  
Jack Frost Ice Service, Inc.  
Knowlton Enterprises, Inc.  
Mountain Water Ice Company  
R&K Trucking, Inc.  
Winkler Lucas Ice and Fuel Company  
Wonderland Ice, Inc.

# **APPENDIX “B”**

**THE QUEEN'S BENCH  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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(COLLECTIVELY, "THE APPLICANTS")**

**TENTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
MARCH 5, 2013**

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**Appendix B - Transition Order dated July 12, 2012**

**Appendix C - Claims Procedure Order dated September 5, 2012**

**Appendix D - The Monitor's Eighth Report dated November 23, 2012, without appendices**

## 1.0 INTRODUCTION

- 1.1 Pursuant to an order of The Court of Queen’s Bench (Winnipeg Centre) (the “**Court**”) dated February 22, 2012 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. was appointed as Monitor (the “**Monitor**”) in respect of an application filed by Arctic Glacier Income Fund (“**AGIF**”), Arctic Glacier Inc. (“**AGI**”), Arctic Glacier International Inc. (“**AGII**”) and those entities listed on **Appendix “A”**, (collectively, and including Glacier Valley Ice Company L.P., the “**Applicants**”) seeking certain relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced by the Applicants under the Initial Order are referred to herein as the “**CCAA Proceedings**”.
- 1.2 The Monitor has previously filed nine reports with this Honourable Court. Capitalized terms not otherwise defined in this report (the “**Tenth Report**”) are as defined in the orders previously granted by, or in the reports previously filed with, this Honourable Court by the Monitor.
- 1.3 As reported in the Monitor’s Sixth Report dated August 29, 2012 (the “**Sixth Report**”), on June 7, 2012, Arctic Glacier, LLC (formerly known as H.I.G. Zamboni LLC), an affiliate of H.I.G. Capital (the “**Original Purchaser**”), and the Applicants, excluding AGIF (the “**Vendors**”), entered into an asset purchase agreement (the “**APA**”), pursuant to which the Original Purchaser agreed to purchase all of the Vendors’ assets except the Excluded Assets, and to assume all of the Vendors’ liabilities except the Excluded Liabilities, on an “as is, where is” basis (the “**Sale Transaction**”).
- 1.4 Pursuant to the provisions of the APA, the Original Purchaser designated certain of its affiliates to acquire the Assets and entered into a Designated Purchaser Agreement with



its designees Arctic Glacier, LLC, Arctic Glacier U.S.A., Inc., and Arctic Glacier Canada, Inc. (collectively, the “**Purchaser**”).

- 1.5 The Sale Transaction contemplated by the APA, as amended, closed effective 12:01 a.m. on July 27, 2012 (the “**Closing**”). On July 27, 2012, the Monitor delivered the Monitor’s Certificate to the Purchaser and subsequently filed same with the Court.
- 1.6 As a consequence of the Sale Transaction, the business formerly operated by the Applicants is now being operated by the Purchaser. As such, and in anticipation of the Closing, the Applicants sought and obtained the Transition Order dated July 12, 2012 (the “**Transition Order**”). Among other things, the Transition Order provides that, on and after the Closing, the Monitor is empowered and authorized, to take such additional actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary in order to perform its functions and fulfill its obligations as Monitor, or to assist in facilitating the administration of these CCAA Proceedings. A copy of the Transition Order is attached as **Appendix “B”**.
- 1.7 As a result of the Closing, and as set out further below, the Monitor is holding significant funds for distribution. Accordingly, in the Sixth Report, the Monitor recommended a claims process to identify and determine the claims of creditors of the Applicants (the “**Claims Process**”).
- 1.8 On September 5, 2012, this Honourable Court issued an order approving the Claims Process and, among other things, authorizing, directing and empowering the Monitor to take such actions as contemplated by the Claims Process (the “**Claims Procedure Order**”). The U.S. Court recognized the Claims Procedure Order by Order dated

September 14, 2012. A copy of the Claims Procedure Order is attached as **Appendix “C”**.

1.9 The stay of proceedings set out in the Initial Order (the “**Stay**”), as extended by subsequent orders, expires on March 15, 2013 (the “**Stay Period**”).

1.10 This Tenth Report is filed in support of the Monitor’s motion returnable March 7, 2013 seeking an order:

a) Extending the Stay Period to June 13, 2013;

b) Appointing Claims Officers and empowering the Claims Officers to adjudicate Claims as necessary; and

c) Releasing and discharging the Direct Purchasers’ Advisors’ Charge (as hereinafter defined) and rendering it to be of no further force or effect.

1.11 Further information regarding these proceedings can be found on the Monitor’s website at <http://www.alvarezandmarsal.com/arcticglacier>.

## **2.0 TERMS OF REFERENCE**

2.1 In preparing this Tenth Report, the Monitor has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain former senior management of Arctic Glacier (“**Senior Management**”). Although this information has been subject to review, the Monitor has not conducted an audit or otherwise attempted to verify the accuracy or completeness of any of the information of the Applicants. Accordingly, the Monitor expresses no opinion and does not provide any other form of assurance on or relating to the accuracy of any information contained in this Tenth Report, or otherwise used to prepare this Tenth Report.

- 2.2 Certain of the information referred to in this Tenth Report consists of financial forecasts and/or projections or refers to financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Canadian Institute of Chartered Accountants, has not been performed. Future-oriented financial information referred to in this Tenth Report was prepared based on estimates and assumptions provided by Senior Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.
- 2.3 The information contained in this Tenth Report is not intended to be relied upon by any investor in any transaction with the Applicants or the units of AGIF.
- 2.4 Unless otherwise stated, all monetary amounts contained in this Tenth Report are expressed in United States dollars, which is the Applicants' common reporting currency.

### **3.0 THE CLAIMS PROCESS**

- 3.1 In this section, all capitalized terms not defined elsewhere have the meaning ascribed to them in the Claims Procedure Order.

#### **Summary of Claims Received**

- 3.2 In the Monitor's Eighth Report dated November 23, 2012 (the "**Eighth Report**"), the Monitor reported on the Proofs of Claim and the DO&T Proofs of Claim received in the Claims Process to the date of the Eighth Report, as well as the Monitor's preliminary activities with respect to the review and resolution of the Claims and the DO&T Claims. A copy of the Eighth Report, without appendices is attached as **Appendix "D"**.

3.3 As of March 4, 2013, the Monitor had received 75 Proofs of Claim asserting Claims against the Applicants. In the Eighth Report, the Monitor reported having received 61 Proofs of Claim. Since the Eighth Report, the Monitor has received 12 additional Proofs of Claim, as discussed below and, based on further investigation, is now recording two of the previously reported Claims as four Claims.

3.4 The Monitor has received 4 DO&T Proofs of Claim asserting Claims against the Applicants' Directors, Officers and/or Trustees.

3.5 In addition to the Claims received by the Monitor pursuant to the Claims Process, the Claims Procedure Order provided for the following two Deemed Proven Claims, which are deemed to be accepted as Proven Claims without any further action on behalf of the Claimant:

a) Claim of the United States as provided for in the DOJ Stipulation entered by the U.S. Court on July 17, 2012, deemed accepted as against AGII in the amount of \$7,032,046.96, plus interest; and

b) Claim of the Direct Purchaser Claimants deemed accepted against AGIF, AGI and AGII in the principal amount of \$10 million, plus applicable interest. This Claim represents the amount remaining to be paid under a settlement agreement with the Direct Purchaser Claimants that was previously approved by court order.

3.6 The Claims against the Arctic Glacier Parties received by the Monitor are summarized, by category, in the table below.

| <b>THE ARCTIC GLACIER PARTIES - PROOF OF CLAIM SUMMARY</b>  |                        |               |
|---|------------------------|---------------|
|   | <b>Claims Received</b> |               |
|   | <b>Claim Amount</b>    | <b>No. of</b> |
|   | <b>(\$000's)</b>       | <b>Claims</b> |
|   | <b>(note 1)</b>        |               |
| Claims from current and former management (primarily in respect of claimed Change of Control Bonuses)               | 10,203                 | 8             |
| Claims from current and former Board members (primarily in respect of claimed Change of Control Bonuses)            | 3,835                  | 7             |
| Claims from litigation claimants potentially covered by insurance   | 7,987                  | 24            |
| Claims from litigation claimants not covered by insurance   | 479,188                | 3             |
| Claims from government agencies (excluding CRA and IRS)   | 2,658                  | 22            |
| Canada Revenue Agency marker claim  | -                      | 1             |
| Internal Revenue Service marker claim   | -                      | 1             |
| Indemnity claims - antitrust litigation   | -                      | 3             |
| DOJ Deemed Proven Claim   | 7,032                  | 1             |
| Direct Purchasers' Deemed Proven Claim  | 10,000                 | 1             |
| Other Claims  | 25,322                 | 6             |
| <b>Grand Total</b>  | <b>546,225</b>         | <b>77</b>     |
| Note 1 - Amounts shown are combined US\$ and CDN\$ (blended currency) and assume a US\$/CDN\$ exchange rate at par. |                        |               |

3.7 The Monitor has reviewed all of the Claims received and has contacted many of the Claimants to make enquiries and obtain additional documents and information, as discussed further below.

3.8 Of the 77 Claims summarized in the above table, 7 Claims, in the collective amount of approximately \$113,000, have been withdrawn by the respective Claimants. In addition, the Monitor has issued 10 Notices of Revision or Disallowance (the “**Notices of Disallowance**”). One of the Notices of Disallowance disallowed the Indirect Purchaser

Claim filed in the amount of \$463.58 million in its entirety. The remaining 9 Notices of Disallowance disallowed Proofs of Claim in the collective amount of approximately \$28,000.

3.9 Pursuant to the Claims Procedure Order, Claimants may file a Notice of Dispute within 21 Calendar Days following deemed receipt of a Notice of Disallowance (the “**Dispute Period**”). The Dispute Period for 7 of the Notices of Disallowance has expired with no Notice of Dispute having been received. As such, 14 of the Proofs of Claim received in the Claims Process have been either withdrawn or disallowed on a final basis.

3.10 As discussed in paragraph 3.14 of the Eighth Report, many of the Proofs of Claim received did not assert a specific dollar value and/or stated that the Claim is an estimate and is subject to revision. The Monitor continues to investigate these issues as part of its overall review and potential resolution and settlement of the Claims. As such, the amounts of the Proofs of Claim received set out in the table above are subject to further refinement and revision.

### **Significant Claims**

3.11 The significant Claims against the Arctic Glacier Parties received by the Monitor are summarized in the table below and described further herein.

| <b>Significant Proofs of Claim Filed Against the Arctic Glacier Parties</b> |   |
|---|---|
|   | <b>Amount of Claim<br/>(\$000's) (Note 1)</b> |
| Canadian Direct Purchasers  | 2,000   |
| Martin McNulty  | 13,610  |
| Indirect Purchasers   | 463,580                                       |
| Desert Mountain   | 12,500  |
| Peggy Johnson   | 12,259  |
| Change of Control Claims  | 14,038  |
| <b>TOTAL</b>  | <b>517,987</b>                                |

**Note 1 - Amounts shown are combined US\$ and CDN\$ (blended currency) and assume a US\$/CDN\$ exchange rate at par.**

*The Canadian Direct Purchaser Claim*

3.12 As discussed beginning at paragraph 3.17 of the Eighth Report, on May 4, 2011, AGIF issued a press release announcing the settlement of the Canadian Retail Litigation for CDN\$2 million. The Initial McMahon Affidavit (sworn on February 21, 2012) stated that an agreement in respect of the settlement of the Canadian Retail Litigation was to be placed before the Ontario Superior Court for approval. The Monitor received a Class Claim from the Canadian Retail Litigation Claimants based on the proposed settlement (the “**Canadian Direct Purchaser Claim**”).

3.13 Paragraph 33(c) of the Claims Procedure Order provides that the Monitor may, with the consent of the Applicants (through the CPS) and any Person whose liability may be affected and, in respect of a Class Claim, subject to approval of the court of competent jurisdiction over the Class Claim, resolve or settle the Claim or Class Claim. The Claims Procedure Order also specifically contemplates the filing of a Proof of Claim in respect of the Canadian Retail Litigation.

3.14 The Applicants have served a motion (the “**Canadian Retail Settlement Motion**”) that is also returnable on March 7, 2013. The Canadian Retail Settlement Motion is seeking an order, among other things, approving the execution of the settlement agreement reached in respect of the Canadian Retail Litigation by the CPS on behalf of AGI, and lifting the Stay against AGI for the limited purpose of allowing the parties to seek a certification and settlement approval order against AGI only, on consent, in the Ontario Superior Court of Justice. Should this Court grant the relief sought in the Canadian Retail Settlement Motion and should the Ontario Superior Court approve the settlement agreement, the Canadian Direct Purchaser Claim will be deemed accepted in the amount of CDN\$2 million.

3.15 As set out in the Affidavit of Bruce Robertson dated February 27, 2013, the Monitor supports the relief sought by the Applicants in the Canadian Retail Settlement Motion as it is an important step towards resolving one of the more significant Claims against the Applicants’ estates.

*Claim Submitted by Martin McNulty*

3.16 As set out at paragraph 3.33 of the Eighth Report, the Monitor has received a Proof of Claim from Martin McNulty, a former employee of the Applicants, in the amount of \$13.61 million (the “**McNulty Claim**”). The McNulty Claim relates to outstanding litigation against the Applicants, Reddy Ice Corporation (“**Reddy Ice**”), Home City Ice Company (“**Home City**”) and certain former employees of the Applicants pending in the United States District Court for the Eastern District of Michigan (the “**Michigan Court**”).



3.17 The Monitor has reviewed the McNulty Claim and discussed it with U.S. counsel for the Applicants who have been defending the litigation. The Monitor and its counsel also participated in a conference call with counsel for Mr. McNulty. The Monitor has reviewed documents provided by U.S. counsel for the Applicants and understands that some of the information required by the Monitor to assess and appropriately evaluate the McNulty Claim is subject to certain protective orders issued by the Michigan Court (the “**Protective Orders**”). Accordingly, the Applicants’ U.S. counsel is currently working with the Monitor’s U.S. counsel to file a motion with the Michigan Court seeking an order modifying the Protective Orders to permit the Monitor to have access to the documents and other materials subject to such orders.

3.18 Once it has had an opportunity to review the information subject to the Protective Orders, the Monitor expects to file a Notice of Revision or Disallowance in respect of the McNulty Claim.

*Indirect Purchaser Claim*

3.19 As set out at paragraph 3.19 of the Eighth Report, the Class Representative for the Indirect Purchaser Claimants filed the Indirect Purchaser Claim in the amount of at least \$463.58 million. This Class Claim states that it is filed on behalf of a class of U.S. retail purchasers of packaged ice who are located in 16 different states. It is based on an alleged conspiracy between certain of the Applicants, Reddy Ice and Home City with respect to the market allocation of the sale of packaged ice.

3.20 The Indirect Purchaser Claim specifically notes that, with limited exceptions, the Claimants only have publicly available data with which to estimate their damages at this

time. As such, the amount claimed is stated to be an “estimate” in certain respects and is stated to be “at least \$463,577,602”.

- 3.21 The Indirect Purchaser Claim is, by far, the largest Claim received in the Claims Process. However, as set out in the Eighth Report, the Indirect Purchaser Claimants settled with the other two defendants in the Indirect Purchaser Litigation for substantially less than is being claimed in this Claims Process, namely \$700,000 from Reddy Ice and, provisionally, \$2.7 million from Home City. As such, the Monitor believes that it was in the best interests of the Applicants and their stakeholders to attempt to deal with the Indirect Purchaser Claim as soon as possible after the Claims Bar Date and to attempt to resolve the Indirect Purchaser Claim in an effective and efficient manner.
- 3.22 The Monitor has been, and continues to be, involved in ongoing discussions concerning the litigation commenced by the Class Representative for the Indirect Purchaser Claimants with the Applicants’ Canadian and U.S. counsel, including antitrust counsel who have been involved in these matters for many years. The Monitor and its legal counsel, including independent U.S. antitrust counsel, have reviewed a number of the pleadings, court decisions and related court materials filed in the Indirect Purchaser Litigation in the United States. In addition, the Monitor and its legal counsel have also had numerous discussions with Canadian and U.S. counsel to the Indirect Purchaser Claimants concerning procedural aspects of these CCAA Proceedings and substantive issues concerning the Indirect Purchaser Litigation.
- 3.23 In an effort to reach an early resolution to the Indirect Purchaser Claim, the Monitor, the Applicants and the Indirect Purchaser Claimants agreed to participate in a mediation

presided over by the Honourable former Justice George Adams, which took place in Toronto, Ontario over a two-day period (January 31 and February 1, 2013).

- 3.24 Before the mediation, the Monitor issued a comprehensive Notice of Disallowance dated January 24, 2013, which disallowed the Indirect Purchaser Claim in its entirety. In order to facilitate the mediation, the Monitor agreed that the parties should focus their attention on the mediation and thus, pursuant to paragraph 5 of the Claims Procedure Order, agreed to extend the deadline for the delivery of a Notice of Dispute by the Indirect Purchaser Claimants to a date to be specified by the Monitor.
- 3.25 Despite the assistance of Honourable Mr. Adams, the parties were not able to reach a resolution at the mediation. On February 12, 2013, the Monitor informed counsel to the Indirect Purchaser Claimants that the Dispute Period in respect of the Indirect Purchaser Claim would commence on February 13, 2013. The Monitor received a Notice of Dispute from the Indirect Purchaser Claimants on March 4, 2013.
- 3.26 The Indirect Purchaser Claimants have indicated that, in order to better estimate their damages and to obtain sufficient information to participate in the Claims Process, they require information filed in certain United States courts that is subject to certain protective orders. The Monitor understands that the Indirect Purchaser Claimants intend to file motions to obtain this information in the courts of Michigan, Ohio and Texas. The specific relief sought by the Indirect Purchaser Claimants is: (i) the unsealing of several motions filed by the DOJ in the criminal proceedings against AGII, certain of its former employees, and Home City; (ii) a copy of certain recordings made by the DOJ in connection with its investigation; and (iii) the unsealing of the evidence provided by the DOJ to obtain a warrant to search the offices of Reddy Ice in Texas. Neither the Monitor

nor the Applicants have any opposition in principle to the Indirect Purchaser Claimants obtaining these filings and recordings. The parties are currently in discussions with respect to the specific language regarding the relief sought.

- 3.27 Subject to agreement on the specific language, the Monitor has agreed to file motions to lift the bankruptcy stay in the Chapter 15 Proceedings to the extent necessary to facilitate the Indirect Purchasers Claimants' motions. The Monitor also expects that the special claims officer for the Indirect Purchaser Claim described in paragraph 47 of the Claims Procedure Order will be appointed in the near term.

*The Desert Mountain Claim*

- 3.28 As described in the Monitor's Seventh Report dated October 16, 2012 (the "**Seventh Report**") and Eighth Report, Desert Mountain is the Applicants' former landlord for a facility located in Tolleson, Arizona. Desert Mountain has submitted a Proof of Claim and a DO&T Proof of Claim in the Claims Process (collectively, the "**Desert Mountain Claim**"). The Desert Mountain Claim seeks payment of \$12,500,000, plus certain other amounts, pursuant to a purchase option contained in a lease dated May 25, 2006 between Desert Mountain and the Applicant Arctic Glacier California Inc. (as amended, the "**Arizona Lease**").

- 3.29 On February 27, 2013, the Monitor issued its Ninth Report that dealt exclusively with the Desert Mountain Claim, the Arizona Lease and the motion brought by Desert Mountain by a Notice of Motion dated October 15, 2012. The parties attended before the Honourable Madam Justice Spivak on March 1, 2013, advised that settlement discussions were ongoing, and requested a short adjournment. The matter was adjourned to allow the

parties to continue such discussions. Scheduling of the Desert Mountain motion will be addressed at the March 7, 2013 court hearing.

*Claim Submitted by Peggy Johnson*

3.30 Peggy Johnson submitted a Proof of Claim (the “**Johnson Claim**”) in the Claims Process for (1) royalties allegedly owing in respect of sales by the Applicants of certain products sold under the trade name “Arctic Glacier” for the years 2000 to 2012 inclusive, (2) approximately CDN\$10.5 million in respect of the alleged termination of a royalty agreement, and (3) CDN\$500,000 in relation to the alleged extinguishment of a licence, all plus interest. The Johnson Claim estimates that the retail royalty payment due for 2010 alone was approximately CDN\$1.75 million and the Proof of Claim states it is subject to the full disclosure of information of all sales of Arctic Glacier for the relevant period. As such, the actual claim filed by Ms. Johnson appears to be significantly greater than the face amount set out on the Proof of Claim.

3.31 The Monitor has received further correspondence from Ms. Johnson’s legal counsel, has discussed issues related to the Johnson Claim with the Applicants and continues to investigate the legal and other bases of this claim. Based on its review to date, the Monitor expects to file a Notice of Revision or Disallowance in respect of the Johnson Claim in the near term.

*Claims Submitted for Change of Control Bonuses*

3.32 Claims totalling approximately \$11.1 million submitted by certain former Senior Management of the Applicants are comprised almost entirely of amounts allegedly calculated in accordance with provisions specified in their respective employment

agreements with AGI. The Claimants claim that their employment agreements provide that such amounts are payable in the event of a change of control of AGI (the “**Management Change of Control Bonuses**”).

3.33 Claims totalling approximately \$2.9 million were also filed by current and certain former Directors and/or Trustees, as well as the Corporate Secretary of the Applicants, and are also substantially comprised of amounts which, pursuant to the policies established by the Directors and Trustees, the Claimants allege are to be paid in the event of a change of control of AGI (the “**Board Change of Control Bonuses**”).

3.34 The Monitor has conducted a thorough review of the Claims made in respect of the Management Change of Control Bonuses and the Board Change of Control Bonuses (collectively, the “**Change of Control Bonuses**”) and the Claims in respect of same (collectively, the “**Change of Control Claims**”) and has reviewed certain additional supporting documentation provided by the Applicants. This additional information includes minutes from joint meetings of the Compensation Committee of AGIF and AGI, and minutes from joint meetings of the Board of Trustees of AGIF and the Board of Directors of AGI held during the period January 2006 to July 2012, inclusive. The Monitor has also reviewed certain Annual Information Circulars and other information and has requested certain additional supporting documents from the Applicants beyond that already provided. It is the Monitor’s intention to file a separate report with this Honourable Court during the proposed extended Stay Period that will include the Monitor’s comprehensive analysis of the Change of Control Claims and the Monitor’s conclusions in respect of same.

### **Claims Submitted by the CRA and the IRS**

- 3.35 The Canada Revenue Agency (the “CRA”) and the Internal Revenue Service (the “IRS”) have submitted “marker claims” (the “Tax Claims”) in the Claims Process for an amount yet to be determined, because the Applicants’ tax obligations, including taxes payable in connection with the Sale Transaction, have not yet been quantified. The CRA and the IRS have indicated the Tax Claims are limited to the Applicants’ tax obligations in respect of 2012 and any taxes payable in respect of the Sale Transaction.
- 3.36 Once the Applicants’ 2012 tax returns have been completed and filed, as discussed below, the Monitor intends to contact the CRA and the IRS to request that they quantify and resolve the Tax Claims. The Monitor will report further regarding the Tax Claims in its subsequent reports.

### **Insurance Matters**

- 3.37 The Claims Procedure Order provides that Claims covered by the Applicants’ insurance policies or for which payment is made through the Applicants’ insurance policies shall not be recoverable against the Applicants or the Directors, Officers or Trustees in the Claims Process. The Claims Procedure Order also provides that nothing therein shall bar or prevent any Creditor from seeking recourse against or payment from any applicable insurance proceeds. In order for Claimants to recover any portion of a Claim that may not be covered by insurance from the Applicants’ estates as part of the Claims Process, such Claimants were obliged to file a Proof of Claim in the Claims Process.
- 3.38 Out of an abundance of caution and to ensure that all potential Claimants have received a Proof of Claim Document Package, the Monitor sent Proof of Claim Document Packages

to all parties who the Applicants' insurance broker and insurers advised had open claims against the Applicants' liability and workers' compensation insurance policies.

- 3.39 Parties continue to file claims against the Applicants' insurance policies in relation to the period prior to Closing. The Monitor has continued to send a Proof of Claim Document Package to any newly identified potential Claimant and has provided 30 days for each potential Claimant to submit a Proof of Claim in the Claims Process, should they choose to do so.
- 3.40 Since the Claims Bar Date, the Monitor has sent 26 Proof of Claim Document Packages to parties and/or their respective legal counsel who the Applicants' insurers, insurance broker or former Senior Management have advised have open claims against the Applicants' insurance policies relating to the period prior to the Closing.
- 3.41 To date, 24 Proofs of Claim totalling approximately \$8.0 million were filed by Claimants who were sent Proof of Claim Document Packages based on information provided to the Monitor by the Applicants' insurance broker or insurers. Two of these Claims have been settled by the respective insurer and, accordingly, are included among the Claims for which Notices of Disallowance have been delivered. The Dispute Period for these two Claims has not yet expired. All of the remaining Claims of this nature appear to be covered by insurance and would therefore be excluded from the Claims Process pursuant to the terms of the Claims Procedure Order and resolved in the ordinary course by the insurers. The Monitor has sought confirmation from the Applicants' insurers that these Proofs of Claim are covered by insurance and, once obtained, will respond to the Claimants pursuant to the terms of the Claims Procedure Order. Should any issues arise with respect to these Claims, the Monitor will seek further direction from the Court.



3.42 The Monitor has communicated with the Applicants' insurance broker with respect to establishing an insurance deductible reserve to ensure that the run-off of the litigation covered by insurance does not impede the timing of distributions from the estate. The Monitor is waiting for information requested from the Applicants' insurance broker in order to establish this reserve.

3.43 The Monitor notes that 18 Proofs of Claim were received after the Claims Bar Date (11 litigation Claims potentially covered by insurance and 7 Claims from government agencies). Pursuant to Paragraph 5 of the Claims Procedure Order, the Monitor, in its reasonable discretion, may waive strict compliance with the requirements of the Claims Procedure Order, including in respect of the time of delivery. The Monitor continues to evaluate Proofs of Claim received after the Claims Bar Date.

#### **4.0 PROPOSED APPOINTMENT OF CLAIMS OFFICERS**

4.1 Paragraph 45 of the Claims Procedure Order contemplates that, in the event a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Arctic Glacier Parties and the applicable Claimant, the Monitor shall seek directions from the Court concerning an appropriate process for resolving the dispute. The Monitor has reviewed the Proofs of Claim that have been received and is of the view that certain Claims may not be resolved on a consensual basis without the assistance of a third party adjudicator. The Monitor therefore seeks an order from this Honourable Court appointing two Claims Officers and empowering them to adjudicate such Claims.

## **Appointment, Powers and Compensation of Claims Officers**

- 4.2 The Monitor proposes that two Claims Officers be appointed to deal with Claims, one based in Winnipeg, Manitoba, and one based in Toronto, Ontario. In Winnipeg, Mr. Dave Hill has agreed to act as a Claims Officer in these CCAA Proceedings, subject to being appointed by this Honourable Court. Mr. Hill is a senior partner with the firm Hill Sokalski Walsh and Trippier LLP, which is a litigation firm located in Winnipeg, Manitoba. Mr. Hill was called to the Bar of Manitoba in 1975 and is ranked in *The Best Lawyers in Canada 2013* in the areas of alternative dispute resolution and corporate and commercial litigation.
- 4.3 In Toronto, the Honourable former Justice Jack Ground, an arbitrator and mediator with Neeson Arbitration Chambers, has agreed to act as a Claims Officer in these CCAA Proceedings, subject to being appointed by this Honourable Court. Honourable Mr. Ground is a retired Judge of the Ontario Superior Court and acted as Supervising Judge of the Commercial List. As such, he has expertise in complex insolvency, commercial and corporate matters, and also neutral adjudication. Honourable Mr. Ground has been appointed as the Claims Officer in previous CCAA proceedings.
- 4.4 The Monitor proposes that Claims Officers appointed by, or in accordance with, the proposed draft Order be empowered to determine:
- (a) the validity and value of disputed Claims and/or DO&T Claims, as the case may be;
  - (b) whether the Claim or DO&T Claim, or parts thereof, constitute Excluded Claims;

(c) all procedural matters which may arise in respect of his or her determination of a Claim and/or DO&T Claim, including the manner in which any evidence may be adduced; and

(d) by whom, and to what extent, the costs of any hearing before the Claims Officer shall be paid.

4.5 Pursuant to the procedure set out in the proposed draft order, if a dispute is referred to a Claims Officer, the Claims Officer shall attempt to resolve the dispute as soon as practicable.

4.6 The Monitor also proposes that the Claims Officers shall be entitled to reasonable compensation for the performance of their duties, which compensation is to be paid by the Arctic Glacier Parties forthwith upon receipt of each invoice tendered by the Claims Officers.

4.7 Finally, the Monitor proposes that any special claims officer appointed in accordance with paragraph 47 of the Claims Procedure Order to resolve the Indirect Purchaser Claim shall have the same powers, rights and protections as are granted to a Claims Officer appointed in accordance with the proposed draft Order.

### **Adjudication of Claims**

4.8 The Monitor is of the view that the varied nature of the Claims advanced in the Proofs of Claim will benefit from a flexible resolution process. Therefore, the draft Order provides that:

(a) The Monitor has the sole discretion to refer the dispute to either a Claims Officer or the Court for adjudication; and

(b) The Monitor, with the consent of the impacted parties, may appoint further Claims Officers to adjudicate those parties' dispute.

### **Appeals**

4.9 The draft Order provides that any party impacted by a Claims Officer's determination may appeal to the Court by filing a notice of appeal within fourteen Calendar Days of notification of the Claims Officer's determination. The draft Order also provides that such an appeal be initially returnable within fourteen Calendar Days from the filing of the notice of appeal, and that such an appeal be based on the record before the Claims Officer and not a hearing *de novo*. If no such appeal is initiated within fourteen Calendar Days, then the Claims Officer's determination shall be final and binding.

## **5.0 TAX MATTERS**

5.1 The Applicants retained KPMG LLP ("**KPMG**") to assist in the preparation and filing of the Applicants' tax returns. The Applicants' tax obligations depend, in part, on the Applicants' ability to utilize certain tax losses. For the U.S. Applicants, that ability is largely impacted by the 2011 conversion of \$90.4 million of convertible debenture debt into new units of AGIF, as described in paragraph 24 of the Initial McMahon Affidavit. In order to determine the Applicants' ability to utilize the U.S. tax losses, KPMG is also providing valuation services to estimate the fair market value of the consolidated U.S. operations of the Applicants at the time of the conversion and to allocate that fair market value to the Applicants' U.S. legal entities.

5.2 In addition, the APA provided for an allocation of the proceeds from the Sale Transaction as between the Canadian Applicants and the U.S. Applicants (the "**U.S. Sale Proceeds**")

but did not further allocate the U.S. Sale Proceeds among the 28 individual U.S. legal entities. In order to complete the Applicants' U.S. tax returns, KPMG must allocate the U.S. Sale Proceeds to the individual U.S. legal entities. KPMG is therefore also providing valuation services to determine the U.S. legal entities' individual fair market value at Closing.

- 5.3 The Applicants' tax obligations in respect of their fiscal years ended December 31, 2012 also depend on the deductibility of various expenses, potentially including any Claims proven through the Claims Process and the professional fees incurred. During 2012, the Applicants incurred various types of professional fees which may have differing treatments under the applicable tax legislation. KPMG therefore must identify and characterize the various types of professional fees and other expenses incurred to determine which fees and expenses are deductible for tax purposes and to what extent.
- 5.4 The Monitor and the CPS have had numerous discussions with KPMG with respect to their progress in dealing with the Applicants' tax returns. In order to assist KPMG, the Monitor has provided KPMG with the information in the Monitor's possession relevant to KPMG's work, such as details of the post-Closing receipts and disbursements up to December 31, 2012 and detailed information in respect of the Claims received to date in the Claims Process and the progress in evaluating these Claims. In addition, the Monitor has engaged in numerous discussions with KPMG to clarify the information provided.
- 5.5 Furthermore, the Monitor has assisted KPMG in obtaining information related to the pre-Closing period from the Purchaser pursuant to the Transition Services Agreement (the "TSA"), which was approved by this Honourable Court in the Transition Order. In accordance with the provisions of the TSA, the Monitor and KPMG were able to work

directly with certain employees of the Purchaser (former employees of the Applicants) to collect information required by KPMG. These efforts have been complicated by the fact that certain former employees of the Applicants no longer work for the Purchaser.

- 5.6 KPMG has advised that it anticipates completing the Canadian tax returns by March 31, 2013 and the U.S. tax returns in or around May 15, 2013, subject to completing the valuation of the U.S. Applicants' individual U.S. legal entities by April 1, 2013. The Monitor notes that the deadline for filing the Applicants' tax returns is as follows:

| <b>THE ARCTIC GLACIER PARTIES</b>          |                        |
|--|------------------------|
| <b>Deadlines to File Tax Returns</b>       |                        |
|  | <b>Filing Due Date</b> |
| Canadian Trust Return                      | March 31, 2013         |
| Canadian Corporate Tax Return              | June 30, 2013          |
| U.S. Corporate Tax Extension Filings       | March 15, 2013         |
| U.S. Partnership Extension Filings         | April 15, 2013         |
| U.S. Corporate and Partnership Tax Returns | September 15, 2013     |

- 5.7 To the extent that there are any relevant tax matters between the date of the Tenth Report and the expiry of the proposed Stay Period, the Monitor may file additional reports with the Court, serve such reports on the Service List maintained in these CCAA Proceedings and post such reports on the Monitor's website in respect of these CCAA Proceedings.

## **6.0 OTHER ESTATE MATTERS**

### **The Reconciliation**

- 6.1 In its Eighth Report, the Monitor advised that, in addition to the reconciliation of the Applicants' bank accounts, a number of other post-Closing items had given rise to balances owed as between the Purchaser and the Vendors. The Monitor therefore prepared a detailed schedule of the various outstanding items (the "**Reconciliation**").

6.2 The Monitor had extensive communications with the Purchaser and its legal counsel to obtain supporting documentation in respect of, and to discuss and resolve the various matters included in, the Reconciliation. The Monitor, the Purchaser and their respective legal counsel have resolved all outstanding matters related to the Reconciliation, with the exception of finalizing the Final Transfer Tax Amount (defined and described in the Eighth Report). The Final Transfer Tax Amount is an estimate which can only be finalized once the transfer tax amount included therein in respect of the State of California has been confirmed. The Monitor and the Purchaser continue to seek a response from the State of California. It is the Monitor's expectation that, once finalized, the Reconciliation will likely result in a small payment to the Purchaser.

6.3 The Monitor advised in the Eighth Report that it had arranged for the collapse of two term deposits totaling approximately \$225,000 (CDN\$126,000 and US\$129,000), which were Excluded Assets under the APA and originally formed part of the Reconciliation. Since the date of the Eighth Report, those term deposits have been collapsed and net proceeds of approximately \$178,600 remitted to the Monitor for the benefit of the Applicants' estate. Accordingly these amounts have been excluded from the Reconciliation.

#### **Post-Closing Public Company Disclosure**

6.4 In a press release made on August 15, 2012, AGIF announced, among other things, that it intends to satisfy the provisions of the alternative information guidelines set out in National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* (the "**Alternative Guidelines**") and intends to file the information it or its subsidiaries provide to their creditors with the applicable securities regulatory authorities.

6.5 The Monitor is advised by the Corporate Secretary of AGIF that, since the date of the Eighth Report, AGIF continues to follow the Alternative Guidelines and remains current with the monthly reports and filings required to be made thereunder.

### **Name Changes**

6.6 The Monitor understands that the Applicants have completed the name changes required pursuant to the TSA, as described in the Eighth Report, in all Canadian jurisdictions except Quebec. The Monitor further understands that the Applicants are in the process of registering extra-provincially with a French business name, which will complete the Canadian name changes.

6.7 In the United States, the Monitor understands that it is the Applicants' intention to effect the name changes such that, wherever the name of an Applicant currently includes "Arctic Glacier", the words "Arctic Glacier" will be replaced with "AGI CCAA". The Applicants have been advised by the Corporate Secretary of AGIF that the registrations required in order to effect these name changes will be filed in the near term.

### **Release of the Direct Purchasers' Advisors' Charge**

6.8 The Monitor's Third Report dated May 14, 2012 (the "**Third Report**") was filed in support of a motion made by the U.S. Direct Purchaser Antitrust Settlement Class (the "**U.S. Direct Purchaser Plaintiffs**") for, among other things, a Consent Order implementing the provisions of a settlement agreement executed by the Applicants and the U.S. Direct Purchaser Plaintiffs (the "**DPP Settlement Agreement**").

6.9 The DPP Settlement Agreement, among other things, provided that the Applicants shall pay the documented professional fees and disbursements of the advisors to the U.S.



Direct Purchaser Plaintiffs (the “**Advisors**”) incurred in respect of certain permitted purposes to the capped limit of CDN\$100,000 in the aggregate (the “**Permitted Advisor Fees**”).

6.10 On May 15, 2012, this Honourable Court issued an order that, among other things, granted a charge in favour of the Advisors (the “**Direct Purchasers’ Advisors’ Charge**”) in the amount of CDN\$100,000, as security for the payment of the Permitted Advisor Fees and ranking *pari passu* with the Administration Charge and the Financial Advisor Charge.

6.11 After receiving satisfactory information, including a detailed statement of account, from the Advisors, the Permitted Advisor Fees were paid in full on December 17, 2012. Accordingly, the Monitor is seeking an order to release and discharge the Direct Purchasers’ Advisors’ Charge.

## **7.0 POST-CLOSING RECEIPTS AND DISBURSEMENTS**

7.1 The receipts and disbursements of the Applicants during the period from July 27, 2012 to February 28, 2013, are summarized below:

| <b>Arctic Glacier</b>  |   |
|--|---|
| <b>Statement of Consolidated Receipts and Disbursements</b>  |   |
| <b>For the Period July 27 ,2012 to February 28, 2013 (the "Post-Closing Period")</b>   |   |
|  | <b>Amount<sup>1</sup></b><br><b>(\$000's)</b> |
| <b>Receipts</b>  |   |
| Proceeds from the sale of assets, net  | 131,144                                       |
| Cash transferred from the Applicants'<br>bank accounts, net  | 6,584   |
| Other receipts   | 933   |
| <b>Total Receipts</b>  | <b>138,661</b>                                |
| <b>Disbursements</b>   |   |
| Pre-closing professional fees and expenses <sup>2</sup>  | 2,360   |
| Post-closing professional fees and expenses <sup>3</sup>   | 3,772   |
| MIP payments   | 1,203   |
| Other disbursements  | 1,034   |
| <b>Total Disbursements</b>   | <b>8,369</b>                                  |
| <b>Excess of Receipts Over Disbursements</b>   | <b>130,292</b>                                |
| Note 1 - Amounts shown herein are combined US\$ and CDN\$ (blended currency) and assume a US\$/CDN\$ exchange rate at par.         |   |
| Note 2 - Fees and expenses incurred during the period prior to the Closing of the Sale Transaction and paid subsequent to Closing. |   |
| Note 3 - Fees and expenses incurred and paid subsequent to the Closing of the Sale Transaction.                                    |   |

7.2 Receipts of approximately \$139 million during the Post-Closing Period include:

- the proceeds from the Sale Transaction, net of the Lender Claims and the Financial Advisor's fees;
- the net sale proceeds from the Huntington Transaction, as defined and described in the Seventh Report and its Confidential Supplement (the purchase price of \$1 million, less the broker's commission of \$50,000 and other minor adjustments);

- cash transferred to the Monitor's estate accounts from the Applicants' bank accounts; and
- other receipts, including interest and sales tax and other miscellaneous refunds.

7.3 Disbursements during the Post-Closing Period total approximately \$8.4 million and are primarily comprised of:

- payments made pursuant to the Management Incentive Plan, as discussed in the Sixth Report and approved by this Honourable Court in its order of September 5, 2012;
- payments to the Directors and Trustees in respect of quarterly retainer fees and meeting fees;
- professional fees and expenses incurred during the period prior to Closing that were paid subsequent to Closing;
- professional fees and expenses incurred and paid up to February 28, 2013; and
- other disbursements, including GST/HST, stub period sales taxes, insurance, and other disbursements administrative in nature.

7.4 Professional fees and expenses have been incurred by the Monitor, its legal counsel, the CPS, the Applicants' legal counsel and other professionals retained by the Applicants to assist with the proceedings and include a payment to Marsh described in the Eighth Report.

7.5 The Monitor is currently holding, on behalf of the Applicants, approximately \$130.3 million, all of which is being held in interest-bearing bank accounts in the name of the

Monitor, on behalf of the Applicants. Included in the funds held is \$7.05 million held in an escrow account pursuant to the DOJ Stipulation.

## **8.0 ACTIVITIES OF THE MONITOR**

8.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Eighth Report (November 23, 2012) have included the following:

- Participating in weekly update conference calls between the Monitor, the Monitor's legal counsel, the Applicants' legal counsel, and the CPS to discuss the status of various outstanding matters and, where required, the resolution of the post-Closing matters;
- Providing for non-confidential materials filed with this Honourable Court and with the U.S. Court to be publicly available on the Monitor's website in respect of these CCAA Proceedings and Chapter 15 Proceedings;
- Acting as foreign representative in the Chapter 15 Proceedings;
- Communicating with the Applicants' insurance broker and certain insurers to arrange for continued insurance coverage as appropriate and in respect of new insurance claims filed and the proposed settlements of certain open claims;
- Communicating with claims adjusters and with plaintiffs' counsel regarding certain open insurance claims and, together with the Monitor's Canadian and U.S. legal counsel, seeking orders of the U.S. Court to lift the Stay where appropriate in order to allow for the continued administration of certain insurance claims;
- Fulfilling the Monitor's responsibilities pursuant to the Claims Procedure Order, including reviewing Proofs of Claim received, engaging in correspondence and

discussions with certain of the Claimants and delivering Notices of Disallowance, all in accordance with the provisions of the Claims Procedure Order;

- Attending the Court hearing in Winnipeg on November 29, 2012 when the Court granted an Order extending the Stay;
- Maintaining estate bank accounts, overseeing and accounting for the Applicants' receipts and making disbursements for and on behalf of the Applicants pursuant to the Transition Order, and providing certain professional fee invoices to the CPS for review and discussion;
- Responding to enquiries from unit holders and other stakeholders regarding these CCAA Proceedings, the Sale Transaction, and in particular, the status of the Claims Process;
- Pursuant to the TSA, making arrangements with the Purchaser for access to certain employees and seeking their assistance in respect of investigating and resolving certain post-Closing matters;
- Arranging for the filing of certain sales tax returns related to the period prior to Closing, and related communications with KPMG and certain employees of the Purchaser;
- Preparing and filing monthly GST/HST returns and responding to a request from CRA for a GST/HST audit;
- Arranging for the preparation and filing of T4s, W2s and certain other annual and quarterly payroll related tax filings, and related communications with KPMG and certain employees of the Purchaser;

- Attending segments of meetings of the Board of Trustees in respect of matters relating to the ongoing governance of AGIF and these CCAA Proceedings generally;
- Filing and remitting source deductions in respect of certain payments made to the Directors and Trustees and the Corporate Secretary and investigating the requirement to withhold taxes from U.S. Directors/Trustees; and
- Responding to enquiries from various stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the toll-free hotline number established by the Monitor.

## **9.0 THE STAY EXTENSION**

9.1 The Monitor is requesting an extension of the Stay Period to June 13, 2013. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence.

9.2 The Monitor believes that an extension of the Stay Period until June 13, 2013 is appropriate, as it should allow sufficient time for the Monitor, in consultation with the Applicants, to make enquiries and request additional information in respect of certain Claims, address certain of the outstanding litigation issues, attempt to negotiate the resolution of Claims and obtain a response from the insurers in respect of those Claims which may be covered by the Applicants' insurance policies. The proposed Order seeking the appointment of Claims Officers will facilitate the Claims Process and allow the Monitor to move certain Claims to the adjudication stage should consensual resolutions not be achieved. The proposed Stay Period extension should also allow the

Monitor to assist the Applicants in completing and filing their tax returns and to deal with other matters related to the administration of the Applicants' estates.

#### **10.0 THE MONITOR'S COMMENTS AND RECOMMENDATIONS**

10.1 Given that the Applicants are no longer operating a business, the Applicants and the Monitor have not prepared an extended cash flow forecast through the expiry of the requested extension to the Stay Period. On behalf of the Applicants, the Monitor intends to continue to satisfy any amounts properly incurred in respect of the ongoing administration of the estate, including those with respect to administering the Claims Process, from the funds being held by the Monitor in the estate bank accounts. The Monitor anticipates that such amounts will be primarily limited to fees and expenses of the Directors and Trustees, insurance-related expenses, taxes, professional fees and expenses, and other incidental fees and costs. The funds which the Monitor is holding in its estate bank accounts will be sufficient to satisfy such amounts.

10.2 For the reasons set out in this Tenth Report, the Monitor hereby respectfully recommends that this Honourable Court grant the relief being requested by the Monitor in its Notice of Motion.

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All of which is respectfully submitted to this Honourable Court this 5<sup>th</sup> day of March, 2013.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Arctic Glacier Income Fund,  
Arctic Glacier Inc., Arctic Glacier International Inc. and  
the other Applicants listed on Appendix "A".**



Per: Richard A. Morawetz  
Senior Vice President