

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**"),

Application UNDER THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED

MOTION BRIEF of
PEGGY DARLENE JOHNSON
(Motion for Meeting Order and Other Relief)

HEARING DATE: May 21, 2014
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

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PART I

LIST OF DOCUMENTS TO BE RELIED UPON:

1. The Affidavit of Lucille Fredrickson sworn May 20, 2014;
2. The Fifteenth Report of the Monitor dated May 14, 2014 (the "Fifteenth Report"), including paragraphs 3.12 to 3.40, 4.8, 4.27 to 4.30 and 7; and Appendix "B" thereto, the Consolidated Plan, articles 3, 5.4 and 7;
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

PART II

STATUTORY PROVISIONS AND AUTHORITIES TO BE RELIED UPON:

1. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*
(Applicant's Brief, Tab 13, paras. 51 - 53);

2. *Stelco Inc.* (Applicant's Brief, Tab 17, paras. 15 - 16);

PART III

LIST OF POINTS TO BE ARGUED:

1. The Plan of Arrangement ("Plan") is presented on the basic premise that all Affected Creditors' Claims will be paid in full, either as existing Proven Claims or through fully provided Reserves established for Unresolved Claims, to be resolved either through agreement of the parties or through determination of the Arbitrator in the Claims Process.

2. In CCAA cases, equity holders only have a right to vote if there are sufficient assets to pay all creditors' claims in full. (Stelko, Applicant's Brief, Tab 17).

3. In CCAA cases, a single class of creditors can only be approved by the court if the creditors at issue were found to be treated equally by the proposed Plan of Arrangement, a commonality of interest existed and fragmentation of classes would have made it difficult to obtain approval of the Plan of Arrangement. (ATB Financial – Applicant's Brief, Tab 13)

4. The Monitor's Report at paragraphs 3.12 through 3.40 references five specific Unresolved Claims including the claim of Peggy Darlene Johnson ("Ms. Johnson") where Reserves are established pending agreement or determination by an Arbitrator.

5. In the case of four of the specific Unresolved Claims, McNulty (para. 3.22), the State of California (para. 3.29), Geysir Sales Corporation (para. 3.31) and the City of New York (para. 3.36), the Reserves have been established as described therein at the

face amount of their claim, plus interest estimated to be accrued at the anticipated Plan Implementation Date, notwithstanding such claims are denied in their entirety.

6. Paragraphs 4.27 and 4.28 of the Monitor's Report expressly provide that the Unresolved Claims Reserve shall be in an amount equal to:

- (a) the amounts specified in the Proof of Claim filed by the Affected Creditors with Unresolved Claims ... ; and
- (b) the applicable portion of the Aggregate Interest Amount in respect of such Unresolved Claims.

7. Article 5.4 of the Plan provides that the Unresolved Claims Reserve is "calculated on the basis of the amounts specified in such Affected Creditors' Proof of Claim.

8. The Plan as a whole is devised on the premise that if all Affected Creditors' Claims are paid in full including accrued interest, as proposed, then there are sufficient funds available for the Unit Holders to vote upon the Plan and a distribution to be made to such Unit Holders.

9. However, the Reserve established for Ms. Johnson is not the amount specified in her claim or the minimum aggregate amount of her claim as set out in her Proof of Claim, and in fact is grossly deficient.

10. In fact, her claim in the aggregate on its face is specified at a minimum of:

- (a) Royalties just for 2005 to 2011, calculated at 0.0075 x the yearly sales of Arctic under the brand name "Arctic Glacier" \$11,775,000.00
- (b) Termination, 0.0075 x 2011 sales under the name "Arctic Glacier" 10,500,000.00

(c)	Extinguishment of perpetual licence at a minimum	<u>500,000.00</u>
	TOTAL:	<u>\$22,775,000.00</u>

(Affidavit of Fredrickson)

11. The Reserve established for Ms. Johnson is only \$12,620,000.00 (Cdn) and should be a minimum of \$23,500,000 (Cdn), having regard for said specified claim and accrual of some interest to the Plan Implementation Date.

12. As such:

- (a) Ms. Johnson has not been treated equally with the remaining specific Unresolved Claims;
- (b) the face amount specified in Ms. Johnson's claim, at a minimum, has not been reserved and is approximately only 55% of the minimum face amount specified in her claim based upon sales for 2005 to 2011;
- (c) in the event that Ms. Johnson is successful in her claim, as presented, the Reserve established for her is short by a minimum of approximately \$11,000,000.00 Canadian, prejudicial to Ms. Johnson and all other Unresolved Claimants;
- (d) in such circumstances, there cannot be a Deemed Approval as there is a material risk she will not be paid in full, with surplus funds proposed to be paid out to Unit Holders without regard to said reserve deficiency;
- (e) therefore Ms. Johnson is entitled to vote on the Plan, failing appropriate amendment thereto;

- (f) should a vote be required, it should be in Winnipeg, the head office of Arctic, the location for all court proceedings in Canada under the CCAA and the residence of Ms. Johnson;
- (g) on the basis that all creditors may not be paid in full, due to insufficient reserves, then equity holders have no right to vote in respect of their rights, as equity rights are fully subordinate to the rights of creditors;
- (h) the Plan requires an amendment to maintain a Reserve of at least \$23,500,000.00 (Cdn) in respect to Ms. Johnson, with the aggregate Reserve increased accordingly to take into account that specified amount, whereby all Unresolved Creditors and therefore all creditors will be treated equally, paramount to the rights of Unit Holders;
- (i) given said risk, Ms. Johnson objects to the Plan as presented as the Reserve established for her is seriously deficient.

13. Given that a projected surplus of \$42,000,000.00 exists, more than sufficient to encompass the increase in Ms. Johnson's Reserve to \$23,500,000.00 (Cdn), said minimum specified amount of her claim, Proven Claims should be paid as soon as reasonably possible.

CONCLUSION

14. The proposed Order ought not to be granted until such time as the Plan is amended to include at least a Reserve of \$23,500,000.00 (Cdn) for the specified claim of

Ms. Johnson, and Proven Claims be authorized to be paid as soon as reasonably possible.

All of which is respectfully submitted.

DATED at Winnipeg this 20th day of May, 2014.

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Per: 

D. Wayne Leslie

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