

**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

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**NOTICE OF CROSS-MOTION  
DATE OF HEARING: TUESDAY APRIL 3, 2012 AT 10 A.M.  
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK**

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U.S. Direct Purchaser Class Action

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**NOTICE OF CROSS-MOTION  
(Returnable April 3, 2012)**

The class of direct purchaser plaintiffs (the "Direct Purchasers") in an antitrust class action (the "Action") against Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International Inc. (collectively, "Arctic Glacier") in case No. 08-MDL-01952 in the United States District Court, Eastern District of Michigan, South Division ( the "Action") will make a motion before the Honourable Madam Justice Spivak on Tuesday, April 3, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, in Winnipeg, Manitoba.

**THE MOTION IS FOR:**

1. An Order:

- (a) abridging the time for service of the Notice of Cross-Motion and Motion Record such that the motion is properly returnable April 3, 2012 and dispensing with further service thereof;
- (b) recognizing an ad hoc committee of unsecured creditors (the “UCC”) of the Applicants, comprised of representatives of the Direct Purchasers and the indirect purchaser plaintiffs in a pending class action against Arctic Glacier in the United States, and such other unsecured creditors as may seek to appoint representatives to the UCC , and requiring Arctic Glacier to pay the reasonable fees and disbursements of legal counsel and financial advisors retained by the UCC or, alternatively, the Direct Purchasers in connection with these CCAA proceedings;
- (c) granting a charge on the property of the Applicants to secure payment of the reasonable fees and expenses of the UCC’s or Direct Purchasers’ legal counsel and financial advisors, up to a maximum amount of \$250,000, ranking *pari passu* in priority with the Administration Charge and Financial Advisor Charge as provided for in paragraph 57 of the Initial Order;
- (d) requiring Arctic Glacier to pay the Direct Purchasers and other unsecured creditors which did not receive payments in respect of pre-filing claims an amount proportionate to the amounts which the Applicants have paid to other unsecured creditors in respect of their pre-filing claims against the Applicants, or such other relief as may be appropriate to remedy the preferential treatment received by certain unsecured creditors of the Applicants, including an order directing repayment by all recipients of any amounts received in respect of pre-filing obligations of the Applicants;

- (e) granting a representative of the UCC or alternatively the Direct Purchasers a *de facto* seat on the Special Committee for the purpose of reviewing and selecting Qualified Bids;
- (f) varying paragraph 10 of the Initial Order so as to preclude the Applicants from making any debt service payments on their First Lien Debt, or in the alternative, any interest payments thereon, at the Default Rate and directing the First Lien Lenders to repay all such payments received after the date of the Initial Order;
- (g) requiring the Applicants and the Monitor to provide to the UCC or Direct Purchasers all information set out in the Information Request attached to the report of MNP Limited, including any confidential information subject to a sealing order on such terms as to confidentiality as may be agreed or ordered by this Court; and
- (h) granting such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On February 22, 2012, the Court granted the Initial Order, without notice to the Direct Purchasers;
2. The stay of proceedings imposed by the Initial Order precludes the Direct Purchasers from enforcing their rights to recover payment of \$10 million from Arctic Glacier, which amount is payable on April 2, 2012, pursuant to the terms of a Court approved settlement of the Action;
3. The potential recovery of the Direct Purchasers and other unsecured creditors will be significantly impacted by decisions made and costs incurred in the course of this CCAA

proceeding, thereby requiring recognition and funding of the UCC to provide suitable protection of their interests;

4. The Initial Order permits the Applicants to pay certain pre-filing indebtedness owing by them to other unsecured creditors;
5. The payment of pre-filing claims owing to certain unsecured creditors is unfairly prejudicial to the Direct Purchasers and other unsecured creditors and confers an unwarranted benefit on certain unsecured creditors without reasonable justification;
6. The Direct Purchasers or UCC require access to the information set out in the Information Request in order to assess whether the costs of this CCAA proceeding are fair and reasonable and whether the payments adequately protect the interests of the Direct Purchasers and other unsecured creditors;
7. It is premature at this stage of the CCAA proceedings to permit Arctic Glacier to make debt service payments to its pre-filing secured lenders, and such payments may be unfairly prejudicial to the Direct Purchasers and other unsecured creditors;
8. The payment of interest by Arctic Glacier to its First Lien Lenders at the Default Rate is illegal and contrary to section 8 of *the Interest Act* R.S.C. 1985, c. I-15;
9. Section 11.52(1) of the *Companies' Creditors Arrangement Act*;
10. Rules 2.03, 3.02 and 37.02(1) of the *Courts of Queen's Bench Rules*, Manitoba Reg. 553/88;  
and
11. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

12. Affidavit of Joseph Kohn, sworn April 2, 2012, and the exhibits annexed thereto;
13. Affidavit of Jerry Henechowicz, sworn April 1, 2012, and the exhibits annexed thereto;
14. Affidavit of Keith McMahon sworn February 21, 2012, and the exhibits attached thereto;
15. The Pre-filing report of the Monitor dated February 2, 2012, the Second Report of the Monitor dated March 30, 2012; and
16. Such further and other materials as counsel may advise and this Court may permit.

April 2, 2012

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