

**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.  
AND 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

---

**ORDER**

DATE OF HEARING: TUESDAY, MAY 15 2012 AT 10 A.M.  
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

---

**McCARTHY TÉTRAULT LLP**  
Suite 5300, Box 48  
Toronto Dominion Bank Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1E6

**Kevin McElcheran**  
Tel: (416) 601-7730  
Fax: (416) 868-0673  
Law Society No. 22119H

**Heather L. Meredith**  
Tel: (416) 601-8342  
Fax: (416) 868-0673  
Law Society No. 48354R

**AIKINS, MacAULAY &  
THORVALDSON LLP**  
30<sup>th</sup> Floor -- 360 Main Street  
Winnipeg, MB R3C 4G1

**G. Bruce Taylor**  
Tel: (204) 957-4669  
Fax: (204) 957-4218

**J.J. Burnell**  
Tel: (204) 957-4663  
Fax: (204) 957-4285

File No.: 1103500

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

THE HONOURABLE MADAM	)	TUESDAY, THE 15 <sup>th</sup>
	)	
JUSTICE SPIVAK	)	DAY OF MAY, 2012

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. AND 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., c. C-36, AS AMENDED

**ORDER**

THIS MOTION, made by the class of direct purchaser plaintiffs (the "**Direct Purchasers**") in a certain class action in case No. 08-MDL-01952 in the United States District Court, Eastern District of Michigan, South Division, for various relief including an Order requiring the Applicants and the Monitor provide the Direct Purchasers with certain confidential information presently subject to a sealing order in accordance with the Initial Order of the Honourable Madam Justice Spivak dated February 22, 2012 (the "**Initial Order**"), was heard this day at the Law Courts Building at 408 York Avenue, in The City of Winnipeg, in the Province of Manitoba.

ON the consent of the Applicants, the Monitor, the DIP Lenders, the Lenders and the Direct Purchasers, and on hearing the submissions of counsel for the Trustees, and on being advised that a settlement has been reached in respect of this Motion, no one appearing for any other party although duly served as appears from the affidavit of service,

1. THIS COURT ORDERS that capitalized terms herein shall have the meaning ascribed thereto in the Initial Order.

#### **DISCLOSURE OF SEALED INFORMATION AND DOCUMENTS**

2. THIS COURT ORDERS that paragraph 63 of the Initial Order be varied to permit the Applicants to disclose a summary of the financial terms of the Financial Advisor Engagement Letter and a copy of the DIP Fee Letter to the attorney for the Direct Purchasers bound by the settlement, his Canadian counsel and his financial advisor (the "**Recipients**") on the terms set out in the confidentiality agreement agreed to by the Applicants and the Recipients, attached hereto as Schedule "B" (the "**Confidentiality Agreement**"), and that such information and documents shall remain confidential and shall be kept confidential by the Recipients as set out in the Confidentiality Agreement.

#### **PAYMENT OF CERTAIN PROFESSIONAL COSTS OF THE DIRECT PURCHASERS**

3. THIS COURT ORDERS that the Applicants shall pay the documented professional expenses actually incurred by the Direct Purchasers for the fees and disbursements of the Recipients solely for the purpose of monitoring these proceedings and for evaluating financial information with respect to the Applicants and information concerning the sale or restructuring of the Business and expressly not including fees and/or disbursements incurred for non-consensual litigation services or litigation support services (the "**Permitted Advisor Fees**"), to the limit of \$100,000 in the aggregate.

4. THIS COURT ORDERS that the Recipients shall be entitled to the benefit of and are hereby granted a charge (the "**Direct Purchasers' Advisors' Charge**") in the amount of C\$100,000 on the Property, as security for payment of the Permitted Advisor Fees as

provided in paragraph 3 above. The Direct Purchasers' Advisors' Charge shall rank *pari passu* with the Administration Charge and the Financial Advisor Charge and shall be deemed discharged immediately on payment of the Permitted Advisor Fees in full or on the payment of C\$100,000 on account of the Permitted Advisor Fees, whichever occurs first.

**DISCLOSURE OF BID SUMMARY TO LENDERS**

5. THIS COURT ORDERS that the portion of paragraph 43(d) of the Initial Order that provides that "the Monitor, the Financial Advisor, the CPS and the Arctic Glacier Parties shall not provide information to the Agent or the DIP Lenders concerning the SISP except in accordance with the SISP" be varied by adding the following proviso "provided that, in the event that no Credit Bid is submitted prior to the Phase 2 Bid Deadline, the Monitor, the Financial Advisor, the CPS and the Arctic Glacier Parties may provide information concerning the bids received in Phase 2 of the SISP (which information shall be at least as detailed as the information provided to the Recipients) to the Agent and/or the Lenders."

**BALANCE OF THE MOTION DISMISSED**

6. THIS COURT ORDERS that the balance of the relief requested by the Direct Purchasers in this Motion is hereby dismissed.

7. THIS COURT ORDERS that there shall be no order as to costs.

*May 15, 2012.*

**L. SPIVAK**  
\_\_\_\_\_  
SPIVAK, J.

**SCHEDULE "A" - Additional 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.

**SCHEDULE "B" – Confidentiality Agreement**

## CONFIDENTIALITY AGREEMENT

Confidentiality agreement dated May 14, 2012 between Arctic Glacier Income Fund on its own behalf and on behalf of its subsidiaries that are Applicants in proceedings (the "**CCAA Proceedings**") commenced by an Initial Order (the "**Initial Order**") made by the Manitoba Court of Queen's Bench on February 22, 2012 under the *Companies' Creditors Arrangement Act* (collectively, the "**Company**") and (1) Kohn, Swift & Graf, P.C., the attorneys for the representative plaintiffs in a certain class action, case No. 08-MDL-01952 in the United States District Court, Eastern District of Michigan, South Division which was settled by a settlement agreement dated March 30, 2011 and an amendment to settlement agreement dated October 26, 2011 (the "**Class Action**"), (2) MNP Ltd., the financial advisor to Kohn, Swift & Graf, P.C. and (3) Dickinson Wright LLP counsel to Kohn, Swift & Graf, P.C. (together, the "**Counterparties**") (the Company and the Counterparties are collectively the "**Parties**" or individually a "**Party**").

Solely for purposes of evaluating steps taken by the Company in the CCAA Proceedings, including the Company's efforts to implement a transaction as contemplated by the sales and investment solicitation process ("**SISP**") approved in the Initial Order (the "**Permitted Purpose**"), the Counterparties have asked the Company to disclose confidential information relating to the CCAA Proceedings and its business and affairs. This Agreement sets out the terms under which the Company is willing to disclose Confidential Information (as defined below) and the terms under which the Counterparties may receive and use such Confidential Information.

### Section 1 Non-Disclosure of Confidential Information.

1. The Counterparties shall (i) keep confidential all information disclosed by the Company to the Counterparties relating to the CCAA Proceedings and/or the Company's business, operations, assets, liabilities, plans, prospects and affairs, including without limitation the information and documents previously subject to a sealing order in accordance with the Initial Order, regardless of whether such information is provided in oral, visual, electronic, written or other form and whether or not it is identified as "confidential" and including all notes, analyses, compilations, forecasts, data, studies, interpretations, or other documents prepared by, on behalf of or for the benefit of, the Counterparties that contain, reflect, summarize, analyze, discuss or review any of the foregoing (the "**Confidential Information**"), (ii) use the Confidential Information solely for the Permitted Purpose and not directly or indirectly for any other purpose, and (iii) not disclose such Confidential Information to any person, including without limitation the representative plaintiffs in the Class Action, except as expressly permitted by this Agreement. Confidential Information does not include any information that:
  - (a) is or becomes generally available to the public (other than as a result of disclosure directly or indirectly by the Counterparties);
  - (b) is or becomes available to the Counterparties on a non-confidential basis from a source other than the Company provided such source does not owe a duty of confidentiality to the Company or to any other person; or
  - (c) is or was independently acquired or developed by the Counterparties without use of any information disclosed by the Company.
2. The disclosure restrictions contained in this Agreement do not apply to any information that is required to be disclosed by law. However, prior to making such disclosure, the Counterparties must unless prohibited by law:

- (a) immediately advise the Company of the requirement;
  - (b) cooperate with the Company in limiting the extent of the disclosure;
  - (c) provide the Company with a reasonable opportunity to obtain a protective order or other remedy in order to preserve the confidentiality of the information required to be disclosed; and
  - (d) disclose only that portion of the Confidential Information which the Counterparties are advised by legal counsel is required to be disclosed.
3. At the Company's request, at any time, the Counterparties shall promptly redeliver to the Company all Confidential Information delivered to the Counterparties and will not retain, in any form, any copies of any such Confidential Information in whole or in part, and the Counterparties shall ensure that all documents, memoranda and notes, in any form, prepared by the Counterparties based on the Confidential Information shall be promptly destroyed, and will certify to the Company in writing that such redelivery and destruction have taken place. Notwithstanding the return or destruction of the Confidential Information, the Counterparties shall continue to be bound by their confidentiality and other obligations hereunder.
4. The Counterparties shall take all steps reasonably necessary to ensure that their respective representatives and employees who have access to the Confidential Information for the Permitted Purpose are aware of and comply with the provisions of this Confidentiality Agreement.

## **Section 2 No Representation or Warranty.**

Each of the Counterparties acknowledges and agrees that the Company and the Monitor make no representation or warranty, expressed or implied, in relation to any of the Confidential Information, its adequacy, accuracy, sufficiency, completeness, or suitability for any particular purpose, and that neither the Company nor its advisors or representatives or the Monitor will have any liability to any of the Counterparties or to any other person for any losses, liabilities, damages, claims, demands, or expenses resulting from, connected with or arising out of resulting from any inadequacy, inaccuracy, insufficiency, incompleteness or unsuitability of the Confidential Information or the use of or reliance on the Confidential Information. Nothing in this Agreement or in the disclosure of any Confidential Information confers any interest in the Confidential Information on the Counterparties. It is specifically agreed that the disclosure of confidential information to the Counterparties does not confer any licence under any patent, trademark, copyright, or any other intellectual property right, by implication or otherwise.

## **Section 3 Remedies.**

In the event of a breach of any of the Counterparties' obligations under this Agreement, the Counterparties must, immediately following discovery of the breach, give notice to the Company of the nature of the breach and take all commercially reasonable and necessary steps to limit the extent of the breach. The Counterparties agree that any breach of this Agreement will give rise to irreparable injury to the Company inadequately compensable in damages. The Company may, in addition to any other remedy, enforce the performance of this Agreement by way of injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damages (and without the requirement of posting a bond or other security) and without the need to establish irreparable harm and each of the Counterparties agrees not to



plead sufficiency of damages as a defence in any such proceeding and further agrees (and will agree in any proceeding) that the fact of disclosure causes irreparable harm to the Company. The rights and remedies provided in this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or equity. Further, upon discovery of a breach of any of the Counterparties' obligations under this Agreement which is confirmed by the Monitor, if any fees are payable by the Company to the Counterparties, such fees will not be paid pending a resolution of all issues surrounding such breach.

#### **Section 4 Entire Agreement.**

This Agreement constitutes the entire agreement among the Parties in respect of Confidential Information and supersedes all prior agreements, representations, warranties covenants or understandings, whether written or oral, relating to the subject matter of this Agreement. This Agreement may be amended or modified only by written instrument executed by all of the Parties. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Manitoba and each of the Counterparties attorns to the non-exclusive jurisdiction of the Province of Manitoba. In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

#### **Section 5 Other Covenants and Agreements.**

In respect of Confidential Information relating the to the business and affairs of the Company, including the implementation of the SISP, the Parties share a common legal and commercial interest in all Confidential Information which is and remains subject to all applicable privileges, including solicitor-client privilege, anticipation of litigation privilege, work product privilege and privilege in respect of "without prejudice" communications. No waiver of any privilege is implied by the disclosure of Confidential Information to any person pursuant to the terms of this Agreement.

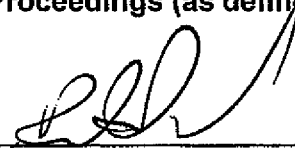
#### **Section 6 Miscellaneous.**

1. Time is of the essence in this Agreement.
2. No waiver of any provision of this Agreement constitutes a waiver of any other provision.
3. This Agreement is binding on and enures to the benefit of the Parties and their respective successors and permitted assigns.
4. Neither this Agreement nor any of the rights or obligations under this Agreement is assignable or transferable by a Party without the prior written consent of the other party.
5. This Agreement may be executed in any number of counterparts (including by facsimile) and all counterparts taken together constitute one and the same instrument.
6. The Parties acknowledge that Arctic Glacier Inc. is signing on behalf of Arctic Glacier Income Fund and on behalf of its subsidiaries that are Applicants in the CCAA Proceedings, it is entering this Agreement solely on behalf of the Company and the obligations of the Company hereunder shall not be personally binding upon any trustee of Arctic Glacier Income Fund or any registered or beneficial holder of units or any annuitant under a plan of which the holder of units acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the

foregoing or the private property of any of the foregoing in respect of the indebtedness, obligation or liability of the Company arising hereunder or arising in connection with or from the matters to which this Agreement relates.

**IN WITNESS WHEREOF** this Agreement has been executed.

**ARCTIC GLACIER INC.**  
on its own behalf and on behalf of Arctic  
Glacier Income Fund and its  
subsidiaries that are applicants for the  
CCAA Proceedings (as defined herein)

Per:   
Name: Keith McMahon  
Title: President + CEO

**Kohn, Swift & Graf, P.C.**

By: \_\_\_\_\_

**MNP Ltd.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Dickinson Wright LLP**

By: \_\_\_\_\_

foregoing or the private property of any of the foregoing in respect of the indebtedness, obligation or liability of the Company arising hereunder or arising in connection with or from the matters to which this Agreement relates.

**IN WITNESS WHEREOF** this Agreement has been executed.

**ARCTIC GLACIER INC.**  
on its own behalf and on behalf of Arctic  
Glacier Income Fund and its  
subsidiaries that are applicants for the  
CCAA Proceedings (as defined herein)

Per: \_\_\_\_\_  
Name:  
Title:

**Kohn, Swift & Graf, P.C.**

By: 

**MNP Ltd.**

Per: \_\_\_\_\_  
Name:  
Title:

**Dickinson Wright LLP**

By: \_\_\_\_\_

foregoing or the private property of any of the foregoing in respect of the indebtedness, obligation or liability of the Company arising hereunder or arising in connection with or from the matters to which this Agreement relates.

**IN WITNESS WHEREOF** this Agreement has been executed.


**ARCTIC GLACIER INC.**  
on its own behalf and on behalf of Arctic  
Glacier Income Fund and its  
subsidiaries that are applicants for the  
CCA Proceedings (as defined herein)

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Kohn, Swift & Graf, P.C.**

By: \_\_\_\_\_

**MNP Ltd.**

Per:   
Name: Jerry Henechowski  
Title: Senior Vice President

**Dickinson Wright LLP**

By: 

foregoing or the private property of any of the foregoing in respect of the indebtedness, obligation or liability of the Company arising hereunder or arising in connection with or from the matters to which this Agreement relates.

**IN WITNESS WHEREOF** this Agreement has been executed.

**ARCTIC GLACIER INC.**  
on its own behalf and on behalf of Arctic  
Glacier Income Fund and its  
subsidiaries that are applicants for the  
CCAA Proceedings (as defined herein)

Per: \_\_\_\_\_  
Name:  
Title:

**Kohn, Swift & Graf, P.C.**

By: \_\_\_\_\_

**MNP Ltd.**

Per: \_\_\_\_\_  
Name:  
Title:

**Dickinson Wright LLP**

By:  \_\_\_\_\_