File No. CI 12-01-76323

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

SUPPLEMENT TO THE FIFTEENTH REPORT OF THE MONITOR ALVAREZ & MARSAL CANADA INC. MAY 20, 2014

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File No.: 85135-1

INDEX TO SCHEDULES

1.0 SUPPLEMENTARY INFORMATION REGARDING THE JOHNSON CLAIM

1.1 On May 14, 2014, the Monitor filed the Fifteenth Report in the CCAA Proceedings (the "**Fifteenth Report**"). The Monitor herein provides supplementary information to the Fifteenth Report in respect of the Johnson Claim (the "**Supplemental Report**"). Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Fifteenth Report. Unless otherwise stated, all monetary amounts contained herein are expressed in US Dollars.

1.2 Paragraphs 3.23 to 3.25 of the Fifteenth Report describe the Johnson Claim.

1.3 On May 20, 2014, the Monitor was provided with an affidavit and Motion Brief on behalf of Ms. Johnson with respect to the motion scheduled for May 21, 2014.

1.4 As previously reported, the Johnson Claim is for: (i) 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, (ii) approximately CDN$10.5 million in respect of the alleged termination of a royalty agreement, and (iii) CDN$500,000 in relation to the alleged extinguishment of a license, all plus interest. Ms. Johnson claims "at least" CDN$12,259,000, based on certain assumptions regarding royalties.

1.5 On April 12, 2013, the Monitor issued a Notice of Disallowance with respect to the Johnson Claim (the "**Johnson Notice of Disallowance**"), revising it to CDN$33,958, solely in relation to the Claim for royalties on bottled water, and disallowed the remainder of the Claim, including the portion of the Claim relating to royalties in respect of sales of packaged ice. The Johnson Notice of Disallowance is attached to this Supplemental Report as **Appendix "B"**.

1.6 On May 2, 2013, Ms. Johnson provided a Dispute Notice in response to the Monitor's Notice of Disallowance. The Dispute Notice states, amongst other things, that the amount of the Johnson Claim is "to be determined upon full disclosure".

1.7 On May 9, 2014, the Monitor instructed its counsel to send a letter to Ms. Johnson's counsel setting out the Monitor's position that the documents recently produced in the affidavits of documents exchanged by the parties make it clear that the claim for royalties on packaged ice has no chance of success. The letter dated May 9, 2014 is attached as **Appendix "C"**.

*****

All of which is respectfully submitted to this Honourable Court this 20th day of May, 2014.

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"

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"

NOTICE OF REVISION OR DISALLOWANCE

For Persons that have asserted Claims against the Arctic Glacier Parties[1], DO&T Claims against the Directors, Officers and/or Trustees of the Arctic Glacier Parties or DO&T Indemnity Claims against the Arctic Glacier Parties

Claims Reference Number: 60

TO: Peggy Darlene Johnson
(the "Claimant")

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Court of Queen's Bench (Winnipeg Centre) in the CCAA proceedings of the Arctic Glacier Parties dated September 5, 2012 (the "Claims Procedure Order").

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim and has revised or disallowed all or part of your purported Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

	Amount as submitted		**Amount allowed by Monitor**
	Currency		
A. Unsecured Claim			
1. Retail Royalties	CDN	Greater of: (a) 0.0075 x Sales or (b) $5,000, plus interest	$33,958.90
2. Termination Payment	CDN	Greater of: (a) 6x Retail Royalties; or (b) $250,000 plus interest	$0
3. License Termination	CDN	$500,000 plus interest	$0
B. Secured Claim		$0	$0
C. DO&T Claim		$0	$0
D. DO&T Indemnity Claim		$0	$0
E. Total Claim		$Not fully quantified	$33,958.90
TOTAL			**$33,958.90**

[1] Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., 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. and Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Winnipeg) on the day that is twenty-one (21) Calendar Days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 51 of the Claims Procedure Order), deliver a Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

Alvarez & Marsal Canada Inc., Arctic Glacier Monitor
Address: Royal Bank Plaza, South Tower
200 Bay Street
Suite 2900
P.O. Box 22
Toronto, Ontario Canada
M5J 2J1
Fax No.: 416-847-5201
Email: **mmackenzie@alvarezandmarsal.com, jnevsky@alvarezandmarsal.com**
Attention: Melanie MacKenzie and Joshua Nevksy

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Dispute Notice is enclosed and can also be accessed on the Monitor's website at www.alvarezandmarsal.com/arcticglacier.

IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 12th day of April, 2013.

Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed Monitor of the Arctic Glacier Parties, and not in its personal or corporate capacity

Per: _____

For more information see www.alvarezandmarsal.com/arcticglacier, or contact the Monitor by telephone (1-866-688-0510)

SCHEDULE "A"

Peggy Darlene Johnson's claim against the Arctic Glacier Parties except Arctic Glacier Income Fund is revised in part and disallowed in part for the following reasons:

Overview

1. The Monitor received a Proof of Claim on October 30, 2012, submitted by Peggy Darlene Johnson ("**Johnson**" or the "**Claimant**"). The Monitor has discussed the Proof of Claim with counsel for and the Corporate Secretary of the Arctic Glacier Parties and the Chief Process Supervisor. In accordance with the Claims Procedure Order, the Monitor has consulted with the Arctic Glacier Parties and the Chief Process Supervisor with respect to this Notice of Revision or Disallowance and has relied on the books and records of the Arctic Glacier Parties. The Proof of Claim asserts an unsecured claim seeking compensation on four grounds:

    A. *Termination Payment for Termination of Retail Royalty Agreement*: The Claimant claims a termination payment for the termination of the Retail Royalty Agreement (defined below) pursuant to its terms. On its face, the Retail Royalty Agreement does not entitle the Claimant to a termination payment. The Claimant's claim for a termination payment is therefore disallowed in full.

    B. *Retail Royalties Claim*: The Claimant claims unpaid royalties allegedly owing pursuant to the Retail Royalty Agreement. Pursuant to this Agreement, royalties are calculated based on a percentage of "Gross Sales of Retail Water". The Claimant alleges that "Retail Water" includes the sales of all products of Arctic under the name Arctic Glacier including but not limited to the sales of bottled water. The Claimant provides examples of packages used for Arctic's packaged ice products and seeks royalty payments based on the Arctic Glacier Parties' sales of all products, including packaged ice. The Monitor sees no basis for such an interpretation of the Retail Royalty Agreement and has therefore revised the claim to unpaid amounts in relation to bottled water only.

    C. *Payment for Extinguishment of License*: The Claimant failed to provide evidence that the License (referred to in the Promissory Note, both as defined below), if it exists, has value. The Monitor therefore has disallowed the claim. The Monitor reserves the ability to consider whether the License existed and was, in fact, extinguished, should the Claimant dispute the Monitor's disallowance of this claim.

    D. *Interest*: The Monitor has revised the Claimant's claim for unpaid retail royalties and has disallowed in full the other claims. Interest is awarded in the Court's discretion; one factor that impacts the Court's exercise of discretion is any delay by the Claimant. The Claimant failed to raise the issue of unpaid royalties for more than eleven years. Given the Claimant's lengthy, unexplained delay, the Monitor has disallowed the Claimant's claim for interest.

Agreements Between the Claimant and the Debtor

2. The Claimant is the former Vice President – Corporate Development for and a former Director of The Arctic Group Inc. ("**Arctic Group**"). In January 2000, the Claimant accepted a severance package and resigned from the Board of Arctic Group.

3. At the same time, Arctic Group acquired from the Claimant all of her shares in Arctic Glacier Canadian Water Co. Inc. ("**WaterCo**"). At all relevant times prior to the acquisition, WaterCo sourced, bottled and distributed water. It did not manufacture packaged ice nor did it have any license, equipment or distribution facilities necessary to manufacture packaged ice. Furthermore, the Claimant, as a Director of the Arctic Group at the time she owned the shares of WaterCo, was prohibited from operating a competing business.

4. Although WaterCo operated out of Arctic Group's premises, it was not affiliated with Arctic Group until January 28, 2000, when Arctic Group purchased all of the Claimant's shares in WaterCo pursuant to a share purchase agreement (the "**SPA**") dated January 28, 2000, between the Claimant, Arctic Group and WaterCo.

5. WaterCo owned certain intellectual property, including the trade name and trademark "Arctic Glacier". Pursuant to the SPA, it was a condition of closing that Arctic Group execute and deliver a retail royalty agreement substantially in the form attached to the SPA to the Claimant. The retail royalty agreement was executed effective on January 28, 2000 (the "**Retail Royalty Agreement**").

6. Pursuant to the SPA, the Purchase Price (as defined in the SPA) was allocated to several tranches including a payment of $500,000 to be made on the first anniversary of the Closing Date (as defined in the SPA). Pursuant to the SPA, this payment was secured by a promissory note in the form attached to the SPA and bore interest at a rate of 8% *per annum*. The promissory note was executed by Arctic Group on January 28, 2000 (the "**Promissory Note**").

7. At the time the SPA, Retail Royalty Agreement and Promissory Note were executed, Robert Nagy was the Chief Executive Officer of Arctic Group. Robert Nagy is the Claimant's brother.

8. The Claimant retained independent legal counsel to advise her on the SPA and related documents.

9. Through various corporate reorganizations, the rights and obligations of Arctic Group under the agreements relevant to the Claimant's claim (described above) are now the rights and obligations of Arctic Glacier Inc. ("**AGI**").

Termination Payment Claim

10. The Claimant alleges that she is entitled to a termination payment pursuant to Section 3.00 of the Retail Royalty Agreement. The Monitor disallows this claim as it is not consistent with the plain language of the Retail Royalty Agreement.

11. Section 3.01 of the Retail Royalty Agreement reads:

> 3.01 The parties understand and agree that this Agreement may be terminated in the following manner under the specified circumstances:
>
> > a) by Arctic at its option in the event Arctic sells all or substantially all of its assets or in the event a Controlling Shareholder acquires a Control Block, upon payment of an amount equal to the greater of:

> i) an amount equal to 6 times the Retail Royalties paid in the 12 month period immediately preceding Arctic's exercise of its rights to terminate this Agreement;
>
> ii) an amount equal to the product of the Retail Royalties paid in the 12 month period immediately preceding Arctic's exercise of its rights to terminate this Agreement and the EBITDA multiple at which a Controlling Shareholder acquires a Control Block; and
>
> iii) the sum of $250,000.
>
> b) upon the occurrence of Arctic becoming insolvent, bankrupt subject to or seeking protection pursuant to the provisions of any winding up act or the *Bankruptcy and Insolvency Act* (Canada) or upon Arctic going into liquidation, either voluntarily or otherwise acknowledging itself to be insolvent;
>
> c) by mutual agreement of the parties to such termination.

12. Based on its plain language, Section 3.01 does not apply in the circumstances and no termination payment is payable. Pursuant to Section 3.01, a termination payment is only payable if the conditions of Subsection 3.01(a) are met. Subsection 3.01(a) gives AGI the exclusive right to terminate the Retail Royalty Agreement in certain circumstances. To date, AGI has not exercised the right to terminate the Retail Royalty Agreement such that no termination payment is payable.

13. Subsection 3.01(b) states that the Retail Royalty Agreement "may be terminated...upon the occurrence of Arctic becoming insolvent...". Contrary to the Claimant's position in paragraph 22 of the Proof of Claim, Subsection 3.01(b) does not require a payment of any kind on termination pursuant to the wording of that Subsection.

14. Furthermore, like Subsection 3.01(a), Subsection 3.01(b) does not apply because AGI has not elected to terminate the Retail Royalty Agreement. Although AGI became insolvent, Subsection 3.01(b) contains permissive language ("may be terminated"). As a result, termination was not the necessary result of AGI becoming insolvent; rather, AGI was permitted to elect to terminate the Retail Royalty Agreement upon AGI becoming insolvent. To date, AGI has not elected to terminate the Retail Royalty Agreement.[2]

15. The Claimant's position that the Sale Transaction – pursuant to which the Arctic Glacier Parties transferred substantially all of their assets to the Purchaser – had the effect of indirectly terminating the Retail Royalty Agreement pursuant to Subsection 3.01(a) is inconsistent with the language of Subsection 3.01(a), which expressly gives AGI the option not to terminate the Retail Royalty Agreement in the event that it sells substantially all of its assets.

16. In addition, if an indirect termination could occur pursuant to the terms of the Retail Royalty Agreement, such a termination would have occurred under Subsection 3.01(b) (the insolvency subsection) rather than under Subsection 3.01(a) (the sale of substantially all assets) because the insolvency subsection does not contain the express option that the Agreement not be terminated and the insolvency occurred before the Sale Transaction. Therefore, if an indirect or effective termination has occurred in the circumstances, it occurred pursuant to Subsection 3.01(b) and no termination payment is required.

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[2] Subsection 3.01(c) requires the mutual agreement of the parties. No such agreement has been reached.

17. The equities also support the Monitor's view that the Claimant's claim for a termination payment in relation to the Retail Royalty Agreement should be disallowed in full. The Claimant and Arctic Group expressly considered in Subsection 3.01(b) whether the Claimant ought to receive a termination payment in the event that Arctic Group became insolvent and jointly and expressly decided that no termination payment should be made in those circumstances.

18. The Claimant's claim for a termination payment in relation to the Retail Royalty Agreement is therefore disallowed in full.

Retail Royalties Claim

19. The Claimant does not limit her retail royalties claim to the Arctic Glacier Parties' sales of bottled water but rather alleges that pursuant to the Retail Royalty Agreement she is entitled to royalties on all products sold under the name Arctic Glacier. As part of her Proof of Claim in relation to the Retail Royalties Claim, the Claimant provides examples of packages used for packaged ice. As described below, based on the plain language used in the Retail Royalty Agreement and the context in which it was signed, the Monitor, in consultation with the Arctic Glacier Parties and the Chief Process Supervisor, has concluded that the Retail Royalty Agreement requires AGI and its subsidiaries and affiliates to pay royalties to the Claimant only on sales of bottled water and not on sales of packaged ice or other products.

20. Section 2.01 of the Retail Royalty Agreement requires AGI to pay to the Claimant royalties "based on Arctic's Gross Sales of Retail Water made under the trade name 'Arctic Glacier'" on the following basis:

> The greater of:
>
> a. ¾ of a percent of the Gross Sales of Retail Water;
>
> b. $5,000.00 per annum.

21. The Retail Royalty Agreement uses the phrase "Retail Water", which is not defined in the Retail Royalty Agreement. Reading the plain language of the Retail Royalty Agreement in Section 2.01, in the context of the Retail Royalty Agreement as a whole, it is plain and obvious that the royalties owing under the Retail Royalty Agreement apply only to the sales of bottled water and not to the sales of packaged ice or other products. For example:

    a. WaterCo did not manufacture or sell packaged ice, nor did it have the equipment or infrastructure necessary to do so. It only sourced, bottled and distributed water.

    b. The Retail Royalty Agreement is expressly tied to the SPA. In its recitals, the Retail Royalty Agreement states that it was given "in consideration of the entering into by Johnson of the Share Purchase Agreement". The SPA defines WaterCo's "Business" as "the ***business presently and hereintofore carried on by [WaterCo] consisting of bottling and distribution of water and related products***" (emphasis added).

    c. In Section 3.12 of the SPA, the Claimant represented and warranted to Arctic Group that "[t]he ***Business is the only business operation carried on by [WaterCo]***" (emphasis added).

d. In Section 3.26 of the SPA, the Claimant represented and warranted to Arctic Group that "[t]he Intellectual Property comprises all trade-marks, trade names, business names, patents, inventions, know-how, copyrights, service marks, industrial designs and all other industrial or intellectual property ***necessary to conduct the Business***" (emphasis added). The trade name "Arctic Glacier" is listed Schedule 3.26 to the SPA and is, therefore, specifically connected to the Business, which is the bottling and distribution of water.

e. In Section 3.30 of the SPA, the Claimant represented and warranted to Arctic Group that the SPA did not contain any untrue statement of material fact nor omitted to state a material fact.

22. In addition, the parties demonstrated their intention to pay royalties to the Claimant based on gross sales of bottled water and not gross sales of packaged ice by selecting a minimum royalty payment of $5,000 per year. As this figure demonstrates, at the time the parties entered into the Retail Royalty Agreement, they did not intend the Claimant to receive more than $10 million in royalties per year, which is what the Claimant claims in her Proof of Claim.

23. As a result, the Retail Royalty Agreement and SPA make it clear that it was the intention of the Claimant and Arctic Group that the Claimant receive royalties based on the gross sales of bottled water and not based on the gross sales of packaged ice.

24. Pursuant to the SPA, it was a condition of closing that the Claimant and Arctic Group execute a Non-Competition and Non-Solicitation Agreement (the "**Non-Compete**"). The Non-Compete was executed and effective on January 28, 2000. The language in the Non-Compete reinforces the Monitor's conclusion that the parties treated bottled water separately from packaged ice as follows:

a. The Non-Compete prohibited the Claimant from engaging in the business of "the manufacture, sales and distribution of packaged ice, bottled water and related products...within 200 miles from the location of each property from which [Arctic Group] presently conducts its business...for a period of three years" (Section 1.01).

b. However, the Non-Compete provided an exemption for bottled water and did not prohibit the Claimant from "engaging in the business of bottling, sales, marketing and distribution of bottled water" outside North America unless Arctic Group was conducting business in those territories (the "Competing Business") (Section 1.01(c)(iii)).

c. The Non-Compete also permitted the Claimant to use the words "Arctic" and "Glacier" as part of the name of a Competing Business. In other words, the Claimant was permitted, in some circumstances, to use the words "Arctic" and "Glacier" in the bottled water business but was never permitted to do so in the packaged ice or related products business. This isolation of bottled water in a contemporaneous agreement supports the Monitor's conclusion that the parties were capable of making the distinction between packaged ice and bottled water and therefore intended to exclude packaged ice and other products from the meaning of "Retail Water" in the Retail Royalties Agreement.

25. Based on its investigations, the Monitor is also of the view that the Claimant understood the Retail Royalty Agreement to provide for royalty payments on the sale of bottled water and not packaged ice. For example, on October 20, 2010, the Claimant emailed Keith McMahon (the then-President and Chief Executive Officer of the Arctic Glacier Parties) and stated:

> I entered into the Retail Royalty Agreement that we discussed in January, 2000 in good faith and on the understanding that Arctic was sincere in its stated intention to pursue the retail sales of bottled water under the trade name "Arctic Glacier". [...] Had I known that Arctic was not going to aggressively enter ***the bottled water arena*** I would not have ***given up ownership of the trademark for the consideration that I did***. I only proceeded with the transaction out of a sense of loyalty to my brother Bob. (emphasis added)

In this October 2010 email, the Claimant directly links "the bottled water arena" with the consideration she received for the trademark. There is no mention of the Claimant receiving compensation for the sale of packaged ice. The October 20, 2010 email is attached to this Notice of Revision and Disallowance as Appendix "A".

26. Furthermore, the Claimant continued to have ties to the Arctic Glacier Parties as late as 2010 and was likely aware of the packaging used on the packaged ice as well as the fact that the Arctic Glacier Parties' sales of packaged ice greatly exceeded sales of bottled water. For example, during the period subsequent to the execution of the Retail Royalty Agreement, the Claimant's brother was the Arctic Glacier Parties' Chief Executive Officer. Furthermore, the Monitor understands that the Claimant was a principal of a company named Siku Glacier Ice Vodka ("**Siku**") that entered into arrangements with AGI to test distribution of Siku's product to certain of AGI's customers. Pursuant to those arrangements, AGI and Siku agreed to share the costs associated with the tests. In 2009 and 2010, AGI invoiced Siku for a total amount of $28,164.70. Despite requests, Siku has failed to repay the amounts owing.

27. Despite her ongoing ties with the Arctic Glacier Parties, the Claimant did not take the position that she was entitled to royalties based on sales of packaged ice until May 2012, after these CCAA Proceedings commenced.

28. As set out above, Section 2.01 of the Retail Royalty Agreement requires AGI to pay royalties to the Claimant in the greater amount of (a) ¾ of a percent of the Gross Sales of Retail Water and (b) $5,000.00 per annum. Between January 28, 2000 and July 27, 2012, ¾ of a percent of the Gross Sales of Retail Water did not exceed $5,000.00. As a result, at most, the Claimant would be entitled to receive a royalty payment of $5,000.00 per annum. A schedule setting out the Arctic Glacier Parties' sales of bottled water for the period January 1, 2000, to September 30, 2010, is attached as Appendix "B".

29. The Claimant's claims are subject to *The Limitation of Actions Act*, C.C.S.M. c. L150, which requires the Claimant to commence an action in relation to the unpaid royalties within six years of the cause of action arising (Subsection 2(1)(i)). Pursuant to Section 2.02 of the Retail Royalty Agreement, AGI was required pay royalties within 30 days of the end of each financial quarter. On October 13, 2011, the Claimant provided AGI a Notice of Dispute pursuant to the arbitration provisions in the Retail Royalty Agreement. The Monitor notes that although the Claimant gave AGI notice of her claim as early as October 2010, the Monitor is not aware of any documents showing that the Claimant took any formal steps in relation to the unpaid royalties before her Notice of Dispute dated October 13, 2011. As a result, the Claimant is only entitled to claim unpaid retail royalties accruing after October 13, 2005.

30. As is set out above, the Retail Royalty Agreement has not been terminated. However, on the plain language of the Retail Royalty Agreement, particularly Section 2.01, there must be Sales for the obligation to pay royalties to exist. Pursuant to the Retail Royalty Agreement, royalties are payable based on the Arctic Glacier Parties' ***Gross Sales*** of Retail Water. "Gross Sales" is defined as "***all Sales*** of Retail Water by Arctic under the trade name Arctic Glacier after deducting applicable discounts and marketing allowances" (emphasis added). The phrase "all Sales" requires that there be at least one sale. In other words, the making of at least one sale is a condition precedent to the obligation to pay royalties.

31. After the Sale Transaction closed on July 27, 2012, the Arctic Glacier Parties made no Sales of bottled water. As Sales are a condition of royalties being payable, since that date, the Retail Royalty Agreement has not obliged AGI to pay royalties.

32. For these reasons, the Monitor revises the Claimant's claim in relation to unpaid royalties to $33,931.51, calculated as follows.

Period	**Amount**
Oct. 13-Dec. 31, 2005 (80 days)	$1,095.89
2006	$5,000.00
2007	$5,000.00
2008	$5,000.00
2009	$5,000.00
2010	$5,000.00
2011	$5,000.00
Jan. 1 – Jul. 27, 2012 (209 days)	$2,863.01
Total	**$33,958.90**

33. The Monitor is not aware of any evidence that supports the Claimant's allegations of bad faith in the Proof of Claim. In particular:

    a. The Arctic Glacier Parties did not severely reduce sales of bottled water. After the Claimant sold her shares in WaterCo to Arctic Group, sales of bottled water increased.

b. None of the documents provided by the Claimant obliged the Arctic Glacier Parties to sell any bottled water nor did they require the Arctic Glacier Parties to seek the Claimant's "agreement" with respect to bottled water sales. Furthermore, the Monitor is not aware of any documents containing such obligations.

c. Section 10.12 of the SPA prevents the Claimant from relying on any representations or orally expressed intentions. Section 10.12 of the SPA states that the SPA "constitutes the entire agreement between the Parties...and supersedes all prior agreements, understanding, negotiations and discussions...either written or oral".

License Termination Claim

34. The Claimant alleges that she has a non-exclusive perpetual license to use the name "Arctic Glacier" or any variation thereof throughout the North American Continent (the "**License**"). She states that the License arises pursuant to the terms of the Promissory Note, alleges that the License was extinguished by the Vesting Order, and claims that she is entitled to $500,000 for the alleged extinguishment of the License. For the reasons set out below, the Monitor has disallowed the Claimant's claim.

35. As set out above, pursuant to the SPA, the Purchase Price (as defined in the SPA) was allocated to several tranches including a payment of $500,000 to be made on the first anniversary of the Closing Date (as defined in the SPA). Pursuant to the SPA, this payment was secured by the Promissory Note. The Promissory Note provided as follows:

> In the event the principal balance together with interest outstanding thereon is not paid by the Borrower on or before January 28, 2001 or within thirty (30) days immediately thereafter the Lender shall, in addition to any other rights arising under and pursuant to this Note:...
>
> (b) be granted a non-exclusive, perpetual license to use the name, "Arctic Glacier" or any variation thereof throughout the North American continent.

36. According to the Monitor's investigations, the Promissory Note was repaid in full with interest on March 22, 2002.

37. Rather than providing direct evidence to prove that the License has value, the Claimant has used the termination provisions in a separate agreement – the Retail Royalty Agreement – as a proxy for the value of the License. There is no basis in fact or law to use the termination provisions in the Retail Royalty Agreement as a proxy for the value of the License. There is certainly no evidence or justification provided to value the License at double an amount payable in only some circumstances pursuant to the Retail Royalty Agreement.

38. Even if the Monitor were to use the termination provisions in the Retail Royalty Agreement as a proxy for the value of the License, the Retail Royalty Agreement does not require any payment for termination pursuant to Subsection 3.01(b) (termination because AGI becomes insolvent). Under the Claimant's approach of relying on the termination provisions in the Retail Royalty Agreement, the License has no value.

39. The Monitor disallows the Claimant's claim as unproven.

40. In addition, in considering the equities of this unproven claim, the Monitor notes that the Promissory Note was paid in full with interest, albeit after the stipulated time period for granting the License, and thus the Claimant did receive the Purchase Price in full. Furthermore, the Proof of Claim does not provide any evidence that the Claimant has used the License in any commercial manner after January 28, 2001. Further, the Monitor has been advised by the Arctic Glacier Parties that the Claimant never raised the issue of the License with the Arctic Glacier Parties prior to the CCAA Proceedings.

41. Furthermore, the Monitor does not agree that the June 21, 2012, Order of the Court of Queen's Bench, which vested all assets of the Arctic Glacier Parties, including the trade-mark "Arctic Glacier", in a third-party purchaser (the "**Vesting Order**") free and clear from any and all security interests, in fact extinguished the License. As the Monitor is disallowing the claim in relation to the License because the Claimant has provided no evidence that the License has any value, the Monitor has not analyzed moot questions. Should the Claimant seek to dispute the Monitor's disallowance of this claim, the Monitor reserves its ability to consider whether the License was, in fact, extinguished by the Vesting Order.

Interest and Costs

42. The Claimant has claimed interest pursuant to *The Court of Queen's Bench Act*, C.C.S.M. c. C280. Interest is awarded in the discretion of the Court. One factor that the Court considers in assessing whether to award interest is the timeliness and motivation for the Claimant's claim. As is set out above, the Claimant did not take formal steps to advance her claim in relation to unpaid royalties until October 2011, more than eleven years after the parties signed the Retail Royalty Agreement. The Monitor therefore disallows the Claimant's claim for interest.

43. The Claimant appears to have claimed costs. The Claimant has provided no basis for such a claim and no information about its quantum. If such a claim is made, it is disallowed.

Appendix "A"

From: Peggy Johnson [mailto:pdjohnson@sikuvodka.com]
Sent: Wednesday, October 20, 2010 2:11 PM
To: Keith McMahon
Subject: FW: Arctic Glacier Retail Royalty Agreement/Outstanding Issues

Dear Keith,

Thank you for taking time to meet with me on August 30th as I know you are very busy. Although you indicated at our meeting that you would get back to me, I have yet to hear from you. I have left you three voice mail messages over the past four weeks but since they have gone unanswered, I thought that I would reach out via e-mail.

I entered into the Retail Royalty Agreement that we discussed in January, 2000 in good faith and on the understanding that Arctic was sincere in its stated intention to pursue the retail sales of bottled water under the trade name "Arctic Glacier". As you know, the name was acquired by Arctic when Arctic purchased the shares of my company, " Arctic Glacier Canadian Water Co. Inc." which owned the Canadian and US trademark. Had I known that Arctic was not going to aggressively enter the bottled water arena I would not have given up ownership of the trademark for the consideration that I did. I only proceeded with the transaction out of a sense

of loyalty to my brother, Bob. In return for that loyalty, and despite the terms of the Agreement, I have received nothing. I am now demanding compensation.

Please contact me as soon as possible to discuss what might be fair compensation to redress this issue, failing which I will be asking my lawyer to assume conduct of this matter.

I look forward to hearing from you soon so that we can amicably resolve this outstanding issue.

Thank you.

Best regards,
Peggy
Phone: 204-771-4699

I would greatly appreciate your assistance with this unfortunate situation.

Please see my contact information below:

Peggy D. Johnson
2112 Henderson Highway
Winnipeg, Manitoba
Canada R2G 1P6
Phone: 204-771-4699
E-mail: pdjohnson@sikuvodka.com

Please feel free to contact me at any time to discuss this further.

Thank you.

Sincerely,
Peggy D. Johnson

Appendix "B"

Arctic Glacier
Manitoba and Saskatchewan Water Sales
January 1, 2000 - September 30, 2010

	Total Water Sales				
Year	Saskatchewan	Manitoba	Total	0.75% of sales	Royalty Payable
2000	161,146.49	158,894.99	320,041.48	2,400.31	5,000.00
2001	274,888.90	178,782.73	453,671.63	3,402.54	5,000.00
2002	268,784.90	174,922.60	443,707.50	3,327.81	5,000.00
2003	302,812.76	156,562.37	459,375.13	3,445.31	5,000.00
2004	317,734.62	137,400.20	455,134.82	3,413.51	5,000.00
2005	289,688.69	122,172.50	411,861.19	3,088.96	5,000.00
2006	280,676.70	135,419.60	416,096.30	3,120.72	5,000.00
2007	273,189.00	123,752.00	396,941.00	2,977.06	5,000.00
2008	271,195.00	111,499.00	382,694.00	2,870.21	5,000.00
2009	248,486.00	84,697.00	333,183.00	2,498.87	5,000.00
2010 to 9/30	194,056.00	55,229.00	249,285.00	1,869.64	5,000.00
	2,882,659.06	1,439,331.99	4,321,991.05	32,414.93	55,000.00

*Royalty payable is the **greater of** $5,000 per annum or 0.75% of gross sales
*Annual water sales would have to be $666,667 to reach $5,000 royalty threshold ($5,000/0.75%)

Data source: Regional Financial Statements 2003-2010; Route Admin 2000-2002

NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE

With respect to the Arctic Glacier Parties[2]

Claims Reference Number: _____

1. **Particulars of Claimant:**

Full Legal Name of Claimant (include trade name, if different)

_____

_____

(the "Claimant")

Full Mailing Address of the Claimant:

_____

_____

Other Contact Information of the Claimant:

Telephone Number: _____

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

[2] Arctic Glacier Income Fund, Arctic Glacier Inc., Arctic Glacier International Inc., 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. And Glacier Valley Ice Company, L.P. (California) (collectively, the "Arctic Glacier Parties").

2. **Particulars of original Claimant from whom you acquired the Claim, DO&T Claim or DO&T Indemnity Claim, if applicable**

Have you acquired this purported Claim, DO&T Claim or DO&T Indemnity Claim by assignment?

Yes: ☐ No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): _____

3. **Dispute of Revision or Disallowance of Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be:**

The Claimant hereby disagrees with the value of its Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be, as set out in the Notice of Revision or Disallowance and asserts a Claim, DO&T Claim or DO&T Indemnity Claim, as the case may be, as follows:

	Currency	**Amount allowed by Monitor: (Notice of Revision or Disallowance)**	**Amount claimed by Claimant:**[3]
A. Unsecured Claim		$	$
B. Secured Claim		$	$
C. DO&T Claim		$	$
D. DO&T Indemnity		$	$
E. Total Claim		$	$

[3] If necessary, currency will be converted in accordance with the Claims Procedure Order.

REASON(S) FOR THE DISPUTE:
(Please attach all supporting documentation hereto).

_____

_____

_____

_____

SERVICE OF DISPUTE NOTICES

If you intend to dispute a Notice of Revision or Disallowance, you must, no later than 5 p.m. Winnipeg time on the day that is twenty-one (21) Calendar Days after the Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 51 of the Claims Procedure Order), deliver this Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

Alvarez & Marsal Canada Inc., Arctic Glacier Monitor

Address:	Royal Bank Plaza, South Tower 200 Bay Street Suite 2900 P.O. Box 22 Toronto, Ontario Canada M5J 2J1
Fax No.:	416-847-5201
Email:	**mmackenzie@alvarezandmarsal.com, jnevsky@alvarezandmarsal.com**
Attention:	Melanie MacKenzie and Joshua Nevsky

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE THIS NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this _____ day of _____, 2013

Name of Claimant: _____

_____
Witness

Per: _____
Name:
Title:
(please print)

Appendix "C"

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Ottawa
Calgary
New York

May 9, 2014

Jeremy Dacks
Direct Dial: 416.862.4923
jdacks@osler.com
Matter No. 1133853

WITH PREJUDICE
DELIVERED BY EMAIL

Mr. D. Wayne Leslie
Fillmore Riley LLP
Suite 1700
360 Main Street
Winnipeg, MB R3C 3Z3

Dear Mr. Leslie:

Arctic Glacier Income Fund et al; CCAA Proceedings – P. Johnson Claim

All capitalized terms have the meaning ascribed to them in the Monitor's Notice of Revision and Disallowance in respect of Ms. Johnson's Claim.[1]

In Ms. Johnson's Proof of Claim, she alleges that sales of Arctic Glacier's packaged ice under the name "Arctic Glacier" that were marketed as "bottled water quality" are "fully covered by the [Retail Royalty Agreement] and in particular were included in 'Gross Sales of Retail Water'".

As set out in the Monitor's Notice of Revision and Disallowance, based on the plain language used in the Retail Royalty Agreement and the context in which it was signed, the Monitor, in consultation with the Arctic Glacier Parties and the Chief Process Supervisor, saw no basis for such an interpretation of the Retail Royalty Agreement and revised the claim to unpaid amounts in relation to bottled water only.

As described in detail below, the documents recently produced in the affidavits of documents exchanged by the parties make it clear that the claim for royalties on packaged ice has no chance of success because:

- WaterCo ***never owned*** the trademark for "Arctic Glacier" in respect of ice.
- The Arctic Glacier Parties – not WaterCo – applied for the trademark "Arctic Glacier" in respect of ice products and Ms. Johnson consented to the Arctic Glacier Parties doing so.

[1] For the purpose of simplicity, in this letter the "Arctic Glacier Parties" includes predecessor corporations where the Arctic Glacier Parties are successors.

- According to Ms. Johnson's sworn evidence in a previous proceeding, the Arctic Glacier Parties assisted in developing the brand and the success of the Arctic Glacier brand depended on the use of the word "Arctic", for which use WaterCo did not compensate the Arctic Glacier Parties.

- Ms. Johnson knew that the Arctic Glacier Parties intended to market packaged ice under the name "Arctic Glacier" and with descriptions like "bottled water quality" ***before*** she negotiated and signed the Retail Royalty Agreement. Nonetheless, the parties only included "Retail Water" in the agreement.

- Ms. Johnson ***expressly considered including ice products in the Retail Royalty Agreement and decided not to do so*** at the time the Agreement was negotiated.

As a result, Ms. Johnson's claim for royalties on packaged ice products is contradicted by the express language in the Retail Royalty Agreement, the context in which that Agreement was negotiated and the equities.

WaterCo Owned Only The Water Trademark

WaterCo registered the trademark for "Arctic Glacier" with respect to "(1) Bottled natural water. (2) Bottled flavoured water, bottled spring water, bottled flavoured and carbonated water."[2] The registered trademark (Application No. 743,077) does not relate to ice in any form (the "**Water Trademark**").

In July 1994, the demand for registration of the Water Trademark was published in the *Journal des marques de commerce*, stating that the wares to which the Water Trademark applied were "(1) Bottled natural water. (2) Bottled flavoured water, bottled spring water, bottled flavoured and carbonated water."[3]

In mid-1995, Natrel Inc. opposed the registration of the Water Trademark. Natrel Inc. had registered the trademarks "Glacier", "Maitre Glacier" and "Monsieur Glacier" for use with frozen dairy products, amongst other things.[4]

In her Counter Statement to the opposition, Ms. Johnson stated, "[WaterCo] has continued to have the intention to use the [Water Trademark] in Canada, in association

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2 Search Report of Various Trademark Registrations, Arctic Glacier Parties' Affidavit of Documents sworn February 13, 2014, ("**AGDocs**"), Tab 1, p. 1.

3 Collection of documents related to trademark, AGDocs, Tab 4, p. 21.

4 Collection of documents related to trademark, AGDocs, Tab 4, pp. 6-13.

with bottled flavoured water, bottled spring water, and bottled flavoured and carbonated water".[5] She did not mention ice in any form.

To resolve this dispute, WaterCo and U L Canada Inc. (Natrel Inc.'s successor) agreed to restrict their uses of their respective trademarks to the wares specifically identified in those trademarks. In addition, WaterCo agreed that it could not use its trademark in respect of beverages with crushed ice components.[6]

When Ms. Johnson agreed to sell her shares in WaterCo to the Arctic Glacier Parties, they entered into the SPA. The SPA includes a "complete and accurate list of all trademarks...owned or used by [WaterCo]." That list – in Schedule L to the SPA – lists the Water Trademark in Canada and the United States as well as a trademark related to Arctic ColdSnapp.[7] It does not list any trademark related to the use of the words "Arctic Glacier" in respect of ice.

In short, the Water Trademark – the only trademark WaterCo owned for "Arctic Glacier" in Canada – did not relate to ice and, in fact, specifically could not be used in respect of beverages with crushed ice.

The Arctic Glacier Parties Always Owned The Ice Trademark

In March 1999, after discussions about Ms. Johnson resigning from the Arctic Group and selling her interest in WaterCo to the Arctic Glacier Parties had started, Ms. Johnson authorized the Arctic Glacier Parties to file, "at its expense, an Application for Trademark in Canada and the United States of America in its name employing the name 'Arctic Glacier' for use in connection with the manufacture, sales and distribution of ice in all forms, dry ice and CO_2."[8]

The Arctic Glacier Parties applied for the trademark (Application No. 1,019,129) (the **"Ice Trademark"**). Again, U L Canada Inc. objected to the Trademark. Ultimately, the Arctic Glacier Parties negotiated an agreement with U L Canada Inc. that was signed long after Ms. Johnson sold her interest in WaterCo to the Arctic Glacier Parties. Pursuant to the agreement, the Arctic Glacier Parties were permitted to use:

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5 Collection of documents related to trademark, AGDocs, Tab 4, p. 16.

6 Letter to P. Johnson, AGDocs, Tab 23, p. 1.

7 Share Purchase Agreement, AGDocs, Tab 194L, p. 36.

8 Authorization and Acknowledgement, AGDocs, Tab 92, p. 6.

- The Water Trademark in relation to bottled natural water, bottled flavoured water, bottled spring water, and bottled flavoured and carbonated water (excluding any beverage having a dairy or crushed ice component); and

- The Ice Trademark in relation to ice, dry ice, and CO_2.

Furthermore, the Arctic Glacier Parties agreed to not use the word "Glacier" without the word "Arctic" in front of it.[9]

Neither WaterCo (before it was sold to the Arctic Glacier Parties) nor Ms. Johnson incurred any expense to obtain the Ice Trademark. Neither had any interest in or right to the Ice Trademark. Ms. Johnson therefore has no right to royalties on ice sold under the name "Arctic Glacier".

The Arctic Glacier Parties Participated In Developing the Trademark

According to Ms. Johnson's sworn answer to opposer's interrogatories in a dispute with Faygo Beverages, Inc. about the "Arctic Glacier" trademark in the United States, the Arctic Glacier Parties provided critical support to the success of the Arctic Glacier brand from the very beginning. In her sworn answer, Ms. Johnson stated:

- "The decisions were made jointly by Ms. Peggy Johnson, President of Arctic Glacier Canadian Water Co. Inc., and Mr. Robert Nagy, President of Arctic Ice".[10]

- "The decision to select the name 'ARCTIC GLACIER' was made by Ms. Johnson and Mr. Nagy, who held informal discussions with each other concerning the relative merits of selecting each of the considered names."[11]

- "[T]he two people who are most knowledgeable of and have authority and responsibility for advertising 'Arctic Glacier'...were: Ms. Peggy Johnson, President of Arctic Glacier Canadian Water Co. Inc., and Mr. Robert Nagy, President of Arctic."[12]

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9 Agreement between The Arctic Group Inc. and U L Canada Inc., AGDocs, Tab 188.

10 Answer to Opposer's Interrogatories of May 13, 1996, Tab 14, p. 3.

11 Answer to Opposer's Interrogatories of May 13, 1996, AGDocs, Tab 14, p. 6.

12 Answer to Opposer's Interrogatories of May 13, 1996, AGDocs, Tab 14, p. 15.

- "The primary reason that the 'ARCTIC' portion, of the trademark 'Arctic Glacier', was selected, was because 'ARCTIC' was the most significant feature of the affiliated company, Arctic Ice".[13]

- "Arctic Ice is one of the oldest established businesses in Canada, and is well known...as a provider of high quality ice products. Therefore, an important factor in the Applicant's decision, was that if the word 'ARCTIC' was maintained in the selected trademark, because of the above mentioned special circumstances, distributors, and other businesses...will more readily know that the Applicant (and its products) are affiliated (by common ownership) with the old and well known Arctic Ice".[14]

The success of the Arctic Glacier brand depended on the association with and support of Arctic Ice. Ms. Johnson's claim for royalties on all packaged ice fails to recognize the participation of the Arctic Glacier Parties in the development of the brand. Her attempt to claim compensation for value that the Arctic Glacier Parties and Bob Nagy helped to create highlights the inequity of the claim.

Ms. Johnson Knew How The Arctic Glacier Parties Would Market Their Ice

Before Ms. Johnson resigned from the Arctic Glacier Parties – and before she negotiated and signed the Retail Royalty Agreement – she knew that the Arctic Glacier Parties intended to market their ice under the name "Arctic Glacier". She also knew the Arctic Glacier Parties intended to refer to the high-quality water used to make the ice.

In February 1999, Co-Opportunities, Incorporated reported to Ms. Johnson and Mr. Nagy about the Arctic Brand Building Initiative. This document – produced by Ms. Johnson and in her possession – makes it clear that the Arctic Glacier Parties were focused on marketing their ice as "bottle water quality". For example, the document states:

- "The vision for The Arctic Group's brand development program is to create, develop, market, distribute and manage the single most important brand of "bottled water" quality products in multi-package format in the N.A. retail and foodservice marketplace".[15]

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[13] Answer to Opposer's Interrogatories of May 13, 1996, AGDocs, Tab 14, p. 8.

[14] Answer to Opposer's Interrogatories of May 13, 1996, AGDocs, Tab 14, pp. 8-9.

[15] Co-Opportunities, Incorporated Report: Arctic Brand – Building Initiative, Ms. Johnson's Affidavit of Documents sworn February 13, 2014, ("**PJDocs**"), Tab 2, p. 11.

- "Guiding Principles: (1) Arctic's packaged ice will always be marketed as having "bottled water quality."[16]

- "Guiding Principles: (5) Ultimately, Arctic's packaged ice and water products will carry the same basic branding."[17]

In addition, before the transaction concluded, Ms. Johnson met with Arthur Anderson seeking assistance in preparing an independent valuation of WaterCo's assets. She explained that, "Arctic Group is desirous of purchasing and assuming the ***Arctic Glacier name for purposes of branding all of its ice and water products***".[18]

Finally, in Ms. Johnson's response to the Law Society of Manitoba, dated May 30, 2012, she includes an article dated May 1998 in the Manitoba Business Magazine in which Mr. Nagy is quoted as saying that Arctic Glacier's ice is as "good as bottled water and refreshes any beverage." As a result, it is clear that Arctic Glacier was using the comparison to bottled water even before there were any discussions with WaterCo about acquiring the name "Arctic Glacier". It is also clear that Ms. Johnson was aware of the comparison and the Arctic Glacier Parties' intentions to brand their ice using the phrase "bottle water quality" before she negotiated the Retail Royalty Agreement. Her allegations that she is entitled to royalties on ice sales without clear language entitling her to such royalties cannot be supported in this context.

Ms. Johnson Rejected Including "Ice" In The Definition Of "Gross Sales Of Retail Water"

Ms. Johnson produced two drafts of the Retail Royalty Agreement that were not in the Arctic Glacier Parties' files;[19] one is a typed black-line dated May 1999; the other, marked with handwritten comments. In both drafts, the word "Ice" is added to the definition of "Sales of Ice and Water". No other draft produced includes Ice in the definition of "Gross Sales of Retail Water" and the final agreement does not include the word "Ice". These documents show that either Ms. Johnson chose not to include Ice in the Retail Royalty Agreement or that she raised it with the Arctic Glacier Parties and they refused to agree to pay her royalties on packaged ice products. In either case, the Retail

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[16] Co-Opportunities, Incorporated Report: Arctic Brand – Building Initiative, PJDocs, Tab 2, p. 13.

[17] Co-Opportunities, Incorporated Report: Arctic Brand – Building Initiative, PJDocs, Tab 2, p. 13.

[18] Copy of letter, Arthur Andersen LLP to Arctic Re Transaction: Arctic Group Inc. and Arctic Glacier, PJDocs, Tab 3, p. 2 (emphasis added).

[19] Copy of draft black-lined Retail Royal Agreement, schedule 7.2(g), PJDocs, Tab 16, p. 3; draft Retail Royalty Agreement, Ms. Johnson's Unsworn Supplementary Affidavit of Documents delivered May 8, 2009, Tab 9.

Royalty Agreement should not be interpreted to require payments that were expressly considered but not agreed to at the time the Retail Royalty Agreement was negotiated.

Conclusion

For the reasons set out above, the Retail Royalty Agreement does not apply to the packaged ice sold by the Arctic Glacier Parties.

Yours very truly,

per: MPat

Jeremy Dacks

MP:ls
c: Kevin McElcheran (*(Commercial Dispute Resolution)*)
Richard Morawetz (*Alvarez)*
Mary Paterson (*Osler, Hoskin & Harcourt LLP)*