

**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")**

**TWENTIETH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.
NOVEMBER 18, 2014**

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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. ("**A&M**") 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 the "**Applicants**", together with Glacier Valley Ice Company L.P., the "**Arctic Glacier Parties**") 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**". The Initial Order appointed 7088418 Canada Inc. o/a Grandview Advisors as the Chief Process Supervisor (the "**CPS**") of the Arctic Glacier Parties. The CCAA Proceedings were subsequently recognized as a foreign main proceeding by the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") and A&M was appointed by the U.S. Court as foreign representative of the Applicants.
- 1.2 The Monitor has previously filed nineteen reports with this Honourable Court. Capitalized terms used but not otherwise defined in this report (the "**Twentieth Report**") are as defined in the orders previously granted by, or in the reports previously filed by the Monitor with, this Honourable Court.

- 1.3 The Sale Transaction for substantially all of the Arctic Glacier Parties' business and assets closed on July 27, 2012. The business formerly operated by the Arctic Glacier Parties continues to be carried on by the Purchaser. In addition, the Monitor continues to hold significant funds for distribution.
- 1.4 On September 5, 2012, this Honourable Court issued an order approving a claims process (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 Claims Procedure Order provided for a Claims Bar Date of October 31, 2012 in respect of the Proofs of Claim and the DO&T Proofs of Claim. The U.S. Court recognized the Claims Procedure Order by Order dated September 14, 2012. A copy of the Claims Procedure Order without schedules is attached as **Appendix "B"**.
- 1.5 The Claims Procedure Order contemplated a further order of the Court to provide an appropriate process for resolving disputed Claims. Accordingly, on March 7, 2013, this Honourable Court issued such an Order (the "**Claims Officer Order**").
- 1.6 On May 21, 2014, this Honourable Court issued an order (the "**Meeting Order**") in respect of the Applicants' consolidated plan of compromise or arrangement dated May 21, 2014, as amended on August 26, 2014 and as may be further amended, supplemented or restated from time to time in accordance with the terms therein (the "**Plan**"). On June 6, 2014, the U.S. Court entered an Order recognizing and giving full force and effect in the United States to the Meeting Order.

- 1.7 On September 5, 2014, this Honourable Court issued an order, among other things, sanctioning and approving the Plan (the “**Sanction Order**”). At the time the Sanction Order was granted, the anticipated Plan Implementation Date was October 15, 2014, which was subject to some uncertainty given the Sales Tax Issue, defined below. On September 16, 2014, the U.S. Court entered an order recognizing and giving full effect to the Sanction Order in the United States.
- 1.8 In the Monitor’s Seventeenth Report dated August 26, 2014 (the “**Seventeenth Report**”), the Monitor noted, among other things, that:
- a) The implementation of the Plan is conditional upon fulfillment of certain conditions precedent on or prior to the Plan Implementation Date; and
 - b) based on the enquiries made by the Monitor, the Monitor became aware that certain of the Arctic Glacier Parties did not file sales tax returns (and in some cases, obtain associated documents in respect thereof) or collect and remit sales taxes in certain U.S. states and localities (the “**Outstanding States**”) where the Arctic Glacier Parties conducted business and completed sales (the “**Sales Tax Issue**”).
- 1.9 On October 15, 2014, the Monitor issued the Supplement to the Seventeenth Report of the Monitor (the “**Seventeenth Report Supplement**”), which advised stakeholders that certain conditions precedent to the Plan Implementation Date had not been fulfilled, that the Monitor and the Applicants continued to work diligently towards satisfying all conditions precedent to Plan Implementation, and that the Monitor would provide additional information to stakeholders in the form of a court report in the following

weeks. A copy of the Seventeenth Report Supplement is attached hereto as **Appendix “C”**.

1.10 A&M, in its capacity as Monitor and as foreign representative of the Applicants, filed the Nineteenth Report of the Monitor (the “**Nineteenth Report**”), excluding the Confidential Appendix, which is subject to a request for a sealing order from the U.S. Court, and served motion materials in the U.S. on or about November 7, 2014 in connection with the Sales Tax Issue (the “**U.S. Sales Tax Motion**”). The U.S. Sales Tax Motion is scheduled to be heard by the U.S. Court on December 12, 2014 at 9:30 a.m. (ET).

1.11 The Nineteenth Report provided:

- a) information regarding the status of the fulfillment of conditions precedent to implementation of the Plan;
- b) information in support of the U.S. Sales Tax Motion seeking an order of the U.S. Court, among other things:
 - i. approving the form and manner of notice to be provided to the various U.S. state and local taxing authorities in the Outstanding States (the “**Taxing Authorities**”); and
 - ii. declaring that the process followed by the Monitor and the CPS to ascertain potential sales tax liability, and the steps taken by the Monitor and the CPS to address any outstanding sales tax obligations and liabilities are:
 - a. sufficient to fulfill the 10.3(d) Condition (as defined below); and

- b. fair and reasonable under the circumstances, consistent with the Monitor's and the CPS's duties under the Initial Order, the Recognition Order and applicable U.S. law, and in the best interests of the Arctic Glacier Parties, the Taxing Authorities, the creditors of the Arctic Glacier Parties, the Unitholders and all other parties with an interest in the CCAA Proceedings and the concurrent Chapter 15 Proceedings (the "**U.S. Sales Tax Order**").

A copy of the Nineteenth Report, without Appendices, is attached hereto as **Appendix "D"**.

- 1.12 The deadline for filing objections in the U.S. Court is 4:00 pm (ET) on December 2, 2014. To date, the Monitor is not aware of any Taxing Authority having indicated an intention to dispute the steps taken or process followed by the Monitor and the CPS to ascertain and address any outstanding potential sales tax obligations and liabilities, as described in the Nineteenth Report. The Monitor will report on the outcome of the December 12, 2014 U.S. Court hearing to consider the U.S. Sales Tax Motion in a subsequent report.
- 1.13 On November 7, 2014, the Monitor, in its capacity as foreign representative of the Applicants, also served motion materials in support of the Monitor's motion for an order of the U.S. Court authorizing the filing under seal of the Confidential Appendix to the Nineteenth Report and the Confidential Exhibit to the U.S. Sales Tax Motion. This motion is also scheduled to be heard by the U.S. Court on December 12, 2014 at 9:30 a.m. (ET).

1.14 The purpose of this Twentieth Report is to:

a) Provide this Honourable Court, Affected Creditors, Unitholders and other interested parties with an update in respect of:

- i. the Sales Tax Issue and anticipated Plan Implementation Date;
- ii. the current status of the Claims Process; and
- iii. the funds held by the Monitor available for distribution to Unitholders; and

b) Provide information in support of the Monitor's motion returnable November 25, 2014 for an order, among other things:

- i. extending the Stay Period to June 15, 2015;
- ii. approving the Monitor's disallowance of the Geysir Claim (defined herein) in full; and
- iii. approving the Seventeenth Report Supplement, the Twentieth Report, and the activities described in the Seventeenth Report Supplement and the Twentieth Report.

1.15 Further information regarding these CCAA Proceedings and the concurrent Chapter 15 Proceedings, and all previous reports of the Monitor, can be found on the Monitor's website at <http://www.alvarezandmarsal.com/arctic-glacier-income-fund-arctic-glacier-inc-and-subsiidiaries>.

2.0 TERMS OF REFERENCE

- 2.1 In preparing this Twentieth Report, the Monitor has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain former senior management of the Arctic Glacier Parties (“**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 provided by Senior Management. 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 Twentieth Report or otherwise used to prepare this Twentieth Report.
- 2.2 Certain of the information referred to in this Twentieth Report consists of “forward-looking information” within the meaning of applicable securities laws, including 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. Any future-oriented financial information and forward-looking statements are not guarantees of future events and involve risks and uncertainties that are difficult to predict. Any future-oriented financial information referred to in this Twentieth Report was, in part, 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 may vary from the projections, and such variations could be material.

2.3 The information contained in this Twentieth Report is not intended to be relied upon by any investor in any transaction with the Arctic Glacier Parties or in relation to any transfer or assignment of the Trust Units of AGIF.

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

3.0 STATUS OF THE SALES TAX ISSUE AND ANTICIPATED PLAN IMPLEMENTATION DATE

3.1 As more particularly described in the Nineteenth Report, implementation of the Plan is conditional upon the fulfillment of certain conditions on or prior to the Plan Implementation Date. As of the date of the Nineteenth Report, all of these conditions had been fulfilled, except the condition prescribed in section 10.3(d) of the Plan, which requires that the Monitor and the CPS be satisfied that (a) all tax returns required to be filed by or on behalf of the Arctic Glacier Parties have been or will be duly filed in all appropriate jurisdictions; and (b) all taxes required to be paid in respect thereof have been or will be paid (the “**10.3(d) Condition**”).

3.2 As set out in the Monitor's Nineteenth Report, the Monitor and the CPS are taking steps to address the Sales Tax Issue and to satisfy the 10.3(d) Condition in a timely manner. Assuming that the proposed form of order sought in the U.S. Sales Tax Motion is granted on December 12, 2014, the Plan will be implemented following the expiration of any applicable appeal period. In such circumstances, it is anticipated that the Plan Implementation Date would fall on or about January 8, 2015, provided however, that the

Monitor reserves the right to implement the Plan prior to the expiration of any applicable appeal period if, in the Monitor's sole and absolute discretion, and with the advice of counsel, it is appropriate under the circumstances, assuming there is no court-ordered stay pending appeal. On the Plan Implementation Date, the Monitor will, among other distributions, make a full distribution to creditors with Proven Claims, and will disburse funds to the Applicants' transfer agent for distribution to Unitholders, as the first interim distribution.

4.0 THE CLAIMS PROCESS

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

Summary of Claims Received and Status of Claims Process

4.2 As reported in the Fifteenth Report and the Seventeenth Report, the Monitor received 83 Proofs of Claim, with Claim amounts totaling at least \$547.5 million (combined currency), including the Deemed Proven Claims of the DOJ and the Direct Purchaser Claimants. In addition, 4 DO&T Proofs of Claim were received.

4.3 Of the 83 Claims received:

- 23 Claims have been proven in amounts totalling approximately \$33.5 million (the "**Proven Claims**");
- 3 Claims totalling approximately \$16.0 million are yet to be resolved (the "**Unresolved Claims**"); and

- Approximately \$498.0 million of the total amount of Claims filed has been disallowed, withdrawn or compromised.

The Unresolved Claims

4.4 The three Unresolved Claims are summarized in the following table:

The Arctic Glacier Parties - Summary of Unresolved Claims	
	Amount of Claim (\$000's)
McNulty Claim	13,610
State of California Franchise Tax Board	2,194
City of New York	218
TOTAL, excluding interest	16,022

- 4.5 As described in the Fifteenth Report, the Plan includes a reserve for the Unresolved Claims (the “**Unresolved Claims Reserve**”). Including interest, the amount of the Unresolved Claims Reserve is currently approximately \$16.55 million.
- 4.6 Since the date of the Seventeenth Report, when the Monitor last provided an update in respect of the status of the Unresolved Claims, the Claim submitted by Geysir Sales Corporation, Inc. (the “**Geysir Claim**”) has been resolved.
- 4.7 As previously reported, the Geysir Claim was filed for \$324,705 in respect of property damage allegedly caused by an ammonia leak in one of the Applicants’ facilities. On May 14, 2013, the Monitor issued a Notice of Revision or Disallowance in respect of the Geysir Claim, disallowing the Geysir Claim in full on the basis that it was covered by the Applicants’ environmental insurance policy. In response, counsel to Geysir Sales Corporation, Inc. (“**Geysir**”) filed a Notice of Dispute dated September 12, 2013.

- 4.8 The Geysir Claim is covered by the Applicants' environmental insurance policy, and the underlying litigation filed by Geysir in the Supreme Court of the State of New York (the "**New York Action**") was being dealt with by the Applicants' insurer in the ordinary course. On December 4, 2013, the U.S. Court granted a consent Order lifting the stay and permitting the New York Action to proceed.
- 4.9 On September 23, 2014, the Supreme Court of the State of New York issued an order granting summary judgement against Geysir and dismissing the New York Action. That decision was not appealed and is now final and binding. A copy of that order is attached as **Appendix "E"**.
- 4.10 The substance of the Geysir Claim has been dismissed by a Court of competent jurisdiction. In accordance with paragraph 33(c) (ii) of the Claims Procedure Order, the Monitor seeks this Honourable Court's approval of the Monitor's disallowance of the Geysir Claim in full. Counsel for Geysir has advised that Geysir does not object to the order sought and the Monitor has served counsel for Geysir with this Report.
- 4.11 There is a \$50,000 deductible amount per incident provided for in the Applicants' environmental insurance policy in respect of the Geysir Claim that will be paid by the Applicants in the ordinary course.
- 4.12 The Monitor's Eighteenth Report dated October 1, 2014, provided detailed information in respect of the McNulty Claim and its current status. There is nothing further to report at this time.

- 4.13 As described in paragraph 3.7 of the Seventeenth Report, in respect of the Claim filed by the City of New York, the Monitor is continuing to request information from the Purchaser which is considered necessary to advance the resolution of the claim filed.
- 4.14 As described in paragraph 3.28 of the Monitor's Fifteenth Report dated May 14, 2014, in respect of the Claim filed by the State of California Franchise Tax Board ("**FTB**"), the Monitor understands that the former owners of Jack Frost Ice Service, Inc. (who owe indemnification obligations to the Applicants in respect of such Claim) continue to engage in active settlement discussions with the FTB. Should the FTB Claim not be resolved prior to the Plan Implementation Date, the Monitor will provide information to the Court and the Applicants' stakeholders about the steps the Monitor will take towards resolving the Claim.

5.0 RECEIPTS AND DISBURSEMENTS

- 5.1 As discussed in the Seventeenth Report, on August 26, 2014, the Monitor was holding approximately \$115.9 million on behalf of the Applicants.
- 5.2 During the period from August 27 to November 14, 2014 (the "**Reporting Period**"), the Applicants' net cash outflows totaled approximately \$1.25 million, comprised of receipts of approximately \$297,500 and disbursements of approximately \$1.55 million.
- 5.3 The receipts are primarily comprised of tax refunds. The disbursements of \$1.55 million primarily consist of professional fees and expenses totaling approximately \$1.37 million, which include the fees and expenses paid to the Monitor, its legal counsel, the CPS, the Applicants' legal counsel, Genetelli Consulting Group ("**Genetelli**"), and other professionals retained by the Applicants to assist with these CCAA Proceedings; and

other disbursements of approximately \$177,000, including fees and expenses paid to the Directors and Trustees, taxes, and disbursements of an administrative nature.

- 5.4 As at November 14, 2014, the Monitor is holding approximately \$114.7 million, \$100 million of which is invested in U.S. dollar term deposits held in a Canadian chartered bank. The remaining \$14.7 million is being held in interest-bearing bank accounts in the name of the Monitor, on behalf of the Applicants. Included in the funds of \$14.7 million held in interest-bearing accounts is \$7.09 million, which includes interest, and continues to be held in a U.S. escrow account in the name of the Monitor pursuant to the DOJ Stipulation.

6.0 FUNDS AVAILABLE FOR DISTRIBUTION TO UNITHOLDERS

- 6.1 As described in the Seventeenth Report and updated herein, certain matters will affect the amount of funds available to be ultimately allocated to the Unitholders' Distribution Cash Pool on the Plan Implementation Date. These matters include whether the U.S. Court grants the U.S. Sales Tax Order, and the related timing if it does so, as well as disbursements made in the ordinary course. Accordingly, it is not currently possible to precisely calculate the Unitholders' Distribution Cash Pool. The Monitor notes that the \$53.5 million shown in the table below as the "Estimated Unitholders' Distribution Cash Pool on the Plan Implementation Date" is based upon assumptions about future events and actual results will vary. At the Plan Implementation Date, the Monitor will undertake a calculation in the form set out in the table below. Unless one of the Unresolved Claims is resolved before the anticipated Plan Implementation Date, the

only amount in the table below that will change before the anticipated Plan Implementation Date is “Funds held by the Monitor”.

THE ARCTIC GLACIER PARTIES FORMULA TO CALCULATE FINANCIAL POSITION ON THE PLAN IMPLEMENTATION DATE		
	Amount	
	(US\$000's)	(CDN\$000's)
Funds held by the Monitor at November 14, 2014	114,346	325
Less:		
Administrative Costs Reserve	10,000	-
Insurance Deductible Reserve	850	-
Unresolved Claims Reserve	16,547	-
Recovered Fees	-	426
Affected Creditors Distribution Cash Pool	19,243	14,102
Total reserves, recovered fees and Affected Creditors Distribution Cash Pool	46,640	14,528
	67,706	(14,203)
Estimated Unitholders' Distribution Cash Pool on the Plan Implementation Date (net total in combined currency). This does not take into account ongoing administration costs of the CCAA Proceedings to be incurred and/or paid between the Reporting Period and the Plan Implementation Date and excludes any foreign exchange effect on the conversion of U.S. dollars into Canadian dollars that may be required to meet Canadian dollar obligations.	53,503	

7.0 ACTIVITIES OF THE MONITOR

7.1 In addition to the activities of the Monitor described above, the Monitor’s activities from the date of the Seventeenth Report (August 26, 2014) have included the following:

- Continuing to participate in 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;

- Continuing to provide for non-confidential materials filed with this Honourable Court and with the U.S. Court to be publicly available on the Website in respect of these CCAA Proceedings and the Chapter 15 Proceedings;
- Drafting the Seventeenth Report Supplement, the Eighteenth Report, the Nineteenth Report, and this Twentieth Report;
- Continuing to act as foreign representative in the Chapter 15 Proceedings;
- Communicating with insurance adjusters and with plaintiffs' counsel regarding certain open insurance claims;
- Continuing to fulfill the Monitor's responsibilities pursuant to the Claims Procedure Order and the Claims Officer Order;
- Attending the September 5, 2014 Sanction hearing and the September 16, 2014 U.S. Sanction Recognition hearing;
- Reviewing and following up with KPMG, the Purchaser and the respective tax authorities in respect of various corporate tax assessments received related to the 2012 tax year as well as prior years, and related communications with the CPS;
- Communicating with KPMG in respect of the preparation of the 2013 year-end financial information and tax returns of the U.S. Applicants;
- Arranging for the preparation and filing of the tax returns of the U.S. Applicants for the year ended December 31, 2013;
- Continuing to resolve the Sales Tax Issue in consultation with Genetelli, the CPS, the Applicants' counsel, and the Monitor's Canadian and U.S. counsel;

- Maintaining estate bank accounts, overseeing and accounting for the Applicants' receipts and disbursements pursuant to the Transition Order, and reviewing professional fee invoices and providing same to the CPS for review and discussion;
- Preparing and filing monthly GST/HST returns and various other statutory returns; and
- Responding to enquiries from Unitholders and other stakeholders, including addressing questions or concerns of parties who contacted the Monitor or the CPS on the toll-free hotline number established by the Monitor.

8.0 STAY EXTENSION

- 8.1 Pursuant to the Initial Order and subsequent orders of the Court, a stay of proceedings was granted and extended until November 28, 2014 (the “**Stay Period**”).
- 8.2 The Monitor requests an extension of the Stay Period to June 15, 2015. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence.
- 8.3 The Monitor believes that an extension of the Stay Period until June 15, 2015 is appropriate, as it will allow additional time for the Monitor, in consultation with the Applicants, to continue working towards a resolution of the Unresolved Claims and to implement the process contemplated by the Plan, including (i) working to satisfy or waive the remaining condition precedent to the implementation of the Plan by seeking the U.S. Sales Tax Order, amongst other things; and (ii) implementing the Plan.

8.4 As set out above, should the U.S. Court grant the proposed form of order sought in the U.S. Sales Tax Motion on December 12, 2014, the Plan will be implemented following the expiration of any applicable appeal period, with an anticipated Plan Implementation Date on or about January 8, 2015. Accordingly, the Monitor believes that the proposed Stay extension to June 15, 2015 is fair and reasonable, as the level of activity in the CCAA Proceedings will be reduced after Plan implementation and, therefore, a longer Stay extension is warranted.

9.0 MONITOR'S COMMENTS AND RECOMMENDATIONS

9.1 The Monitor believes that the Arctic Glacier Parties have acted and continue to act in good faith and with due diligence and have not breached any requirements under the CCAA or any Order of the Court. Accordingly, the Monitor recommends that this Honourable Court grant the requested Order, including the granting of the requested extension of the Stay Period.

9.2 The Applicants have not operated their business since July 2012. Therefore, the Applicants and the Monitor have not prepared an extended cash flow forecast. The Monitor, on behalf of the Applicants, intends to continue to satisfy any amounts properly incurred in respect of the ongoing administration of the estate. The Monitor continues to anticipate 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 any incidental fees and costs. The funds held by the Monitor in its estate bank accounts will be sufficient to satisfy such disbursements.

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

All of which is respectfully submitted to this Honourable Court this 18th day of November, 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".**

A handwritten signature in black ink, appearing to read "Morawetz", is written over a horizontal line.

Per: Richard A. Morawetz, Senior Vice President

TAB 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.

TAB B

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")

CERTIFIED COPY
of
CLAIMS PROCEDURE ORDER

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THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE MADAM) WEDNESDAY, THE 5th DAY
)
JUSTICE SPIVAK) OF SEPTEMBER, 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
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ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL INC. and the
ADDITIONAL APPLICANTS LISTED ON SCHEDULE "A" HERETO

CERTIFIED COPY (collectively, the "APPLICANTS")
of
CLAIMS PROCEDURE ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as monitor of the Applicants (the "**Monitor**") for an order establishing a claims process to identify and determine claims of creditors of the Applicants (the "**Claims Process**") was heard this day at the Law Courts Building at 408 York Avenue, in The City of Winnipeg, in the Province of Manitoba.

ON READING the Notice of Motion and the Sixth Report of the Monitor (the "**Sixth Report**"), and on hearing the submissions of counsel for the Monitor, counsel for the Applicants and Glacier Valley Ice Company, L.P. (California) (together, "**Arctic Glacier**" or the "**Arctic Glacier Parties**"), counsel for the Direct Purchaser Claimants (as hereinafter defined), counsel for the Plaintiffs in the Indirect Purchaser Litigation (as hereinafter defined), counsel for the Trustees of the Applicant Arctic Glacier Income Fund, counsel for Desert Mountain Ice LLC, counsel for the Executive Vice-President of Operations for Arctic Glacier, the Chief Process Supervisor and representatives of Talamod Fund LP and Coliseum

Capital Partners LP, also present in person or by telephone, no one appearing for any other party although duly served as appears from the affidavit of service, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of this Motion and the Sixth Report is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. THIS COURT ORDERS that, for the purposes of this Order establishing a Claims Process for the Creditors of Arctic Glacier (and in addition to terms defined elsewhere herein), the following terms shall have the following meanings ascribed thereto:

"Administration Charge" has the meaning given to that term in paragraph 50 of the Initial Order.

"Asset Purchase Agreement" means the asset purchase agreement between Arctic Glacier Income Fund et al. and H.I.G. Zamboni, LLC made as of June 7, 2012, as amended.

"Assumed Liabilities" means the liabilities the Purchaser assumed, fulfilled, performed and discharged as set out in Section 2.03 of the Asset Purchase Agreement.

"BIA" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

"Business Day" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Winnipeg, Manitoba.

"Calendar Day" means a day, including a Saturday, Sunday and any statutory holidays.

"Canadian Retail Litigation" means the class actions listed on Schedule "G" to this Order, commenced in Canada.

"Canadian Retail Litigation Claimants" means each of the members of the class(es) described in the Canadian Retail Litigation class actions.

"CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C36, as amended.

"CCAA Proceedings" means the proceedings commenced by Arctic Glacier in the Court at Winnipeg under Court File No. CI 12-01-76323.

"CCAA Service List" means the service list in the CCAA Proceedings as defined in paragraph 66 of the Initial Order and posted on the Monitor's Website, as amended from time to time.

"Chapter 15 Cases" means the proceedings commenced by the Monitor as the foreign representative on behalf of the Applicants on February 22, 2012 in the United States Bankruptcy Court for the District of Delaware under Chapter 15 of title 11 of the *United States Code* under Case No. 12-10605 (KG).

"Claim" means any right or claim of any Person, other than an Excluded Claim, but including an Equity Claim, that may be asserted or made in whole or in part against an Arctic Glacier Party, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by

guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors, Officers and Trustees) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, (B) relates to a time period prior to the Claims Bar Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Arctic Glacier Party become bankrupt on the Claims Bar Date.

"Claimant" means any Person having a Claim, including a DO&T Indemnity Claim, or a DO&T Claim and includes the transferee or assignee of a Claim, a DO&T Indemnity Claim or a DO&T Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through any such Person.

"Claimants' Guide to Completing the DO&T Proof of Claim" means the guide to completing the DO&T Proof of Claim form, in substantially the form attached as Schedule "D-2" hereto.

"Claimants' Guide to Completing the Proof of Claim" means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule "C-2" hereto.

"Claims Bar Date" means October 31, 2012.

"Class Claim" means a Claim that may be proven by a Class Representative in accordance with the terms of this Order.

"Class Representative" means, for the purposes of this Order establishing a Claims Process for the Creditors of Arctic Glacier, Dickinson Wright LLP in respect of the Direct Purchaser Claimants, Harrison Pensa LLP in respect of the Canadian Retail Litigation Claimants, and Wild Law Group PLLC in respect of the Indirect Purchaser

Claimants described in the Indirect Purchaser Litigation commenced in the United States, or such other class representative who is acceptable to the Monitor.

"Court" means the Court of Queen's Bench of Manitoba.

"Creditor" means any Person having a Claim (including a Class Claim), DO&T Claim or a DO&T Indemnity Claim and includes, without limitation, the transferee or assignee of a Claim, DO&T Claim or DO&T Indemnity Claim transferred and recognized as a Creditor in accordance with paragraph 48 hereof or a trustee, executor, liquidator, receiver, receiver and manager or other Person acting on behalf of or through such Person.

"Creditors' Meeting" means any meeting of creditors called for the purpose of considering and/or voting in respect of any Plan, if one is filed, to be scheduled pursuant to further order of the Court.

"Deemed Proven Claims" means: (i) a Claim in favour of the Direct Purchaser Claimants in the principal amount of US\$10,000,000 plus applicable interest against the Applicants Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International Inc.; and (ii) the DOJ Claim.

"Direct Purchaser Claimants" means each of the members of the class(es) described in the statements of claim issued in the Direct Purchaser Litigation.

"Direct Purchaser Litigation" means the class actions listed on Schedule "I" to this Order.

"Direct Purchasers' Advisors' Charge" has the meaning given to that term in paragraph 4 of the Order of the Honourable Madam Justice Spivak in the CCAA Proceedings on May 15, 2012.

"Director" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of an Arctic Glacier Party.

"Directors' Charge" has the meaning given to that term in paragraph 40 of the Initial Order.

"Dispute Notice" means a written notice to the Monitor, in substantially the form attached as Appendix "1" to Schedule "F" hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance.

"DOJ Claim" means the Claim of the United States against Arctic Glacier International Inc. in the amount of US\$7,032,046.96 as of July 9, 2012, plus interest compounding annually until the date of payment of such Claim at the United States federal post-judgment interest rate of 0.34%, as provided for in the *Stipulation and Order Among the Monitor, Debtors, and the United States Attorney's Office for the Southern District of Ohio Regarding March 2010 Criminal Judgment of Arctic Glacier International Inc.*, dated July 17, 2012, as entered by the U.S. Court in the Chapter 15 Cases.

"DO&T Claim" means (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors, Officers or Trustees that relates to a Claim for which such Directors, Officers or Trustees are by law liable to pay in their capacity as Directors, Officers or Trustees, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors, Officers or Trustees, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,

equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors, Officers or Trustees or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, or (B) relates to a time period prior to the Claims Bar Date, but not including an Excluded Claim.

"DO&T Indemnity Claim" means any existing or future right of any Director, Officer or Trustee against an Arctic Glacier Party, which arose or arises as a result of any Person filing a DO&T Proof of Claim in respect of such Director, Officer or Trustee for which such Director, Officer or Trustee is entitled to be indemnified by such Arctic Glacier Party.

"DO&T Indemnity Claims Bar Date" has the meaning set out in paragraph 21 hereof.

"DO&T Indemnity Proof of Claim" means the indemnity proof of claim in substantially the form attached as Schedule "E" hereto to be completed and filed by a Director, Officer or Trustee setting forth its purported DO&T Indemnity Claim and which shall include all supporting documents in respect of such DO&T Indemnity Claim.

"DO&T Proof of Claim" means the proof of claim, in substantially the form attached as Schedule "D" hereto, to be completed and filed by a Person setting forth its DO&T Claim and which shall include all supporting documentation in respect of such DO&T Claim.

"Equity Claim" has the meaning set forth in Section 2(1) of the CCAA.

"Excluded Claim" means:

- (i) any Claim entitled to the benefit of the Administration Charge, the Inter-Company Balances Charge (as defined in the Initial Order) or the Direct Purchasers' Advisors' Charge;
- (ii) any Claim of an Arctic Glacier Party against another Arctic Glacier Party; and
- (iii) any Claim in respect of Assumed Liabilities.

"Government Authority" means a federal, provincial, state, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over an Arctic Glacier Party.

"Indirect Purchaser Claimants" means each of the members of the putative classes described in the complaints or statements of claim issued in the Indirect Purchaser Litigation.

"Indirect Purchaser Litigation" means the putative class actions listed on Schedule "H" to this Order, commenced in the United States.

"Initial Order" means the Initial order of the Honourable Madam Justice Spivak made February 22, 2012 in the CCAA Proceedings, as amended, extended, restated or varied from time to time.

"Monitor's Website" means www.alvarezandmarsal.com/arcticglacier.

"Notice of Revision or Disallowance" means a notice, in substantially the form attached as Schedule "F" hereto, advising a Claimant or a Class Representative, as the case may be, that the Monitor has revised or disallowed all or part of a Claim, Class Claim, DO&T Claim or DO&T Indemnity Claim submitted by such Claimant or Class Representative pursuant to this Order.

"Notice to Claimants" means the notice to Claimants for publication in substantially the form attached as Schedule "B" hereto.

"Officer" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of an Arctic Glacier Party.

"Person" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity.

"Plan" means any proposed plan(s) of compromise or arrangement to be filed by any or all of the Applicants pursuant to the CCAA as amended, supplemented or restated from time to time in accordance with the terms thereof.

"Proof of Claim" means the proof of claim in substantially the form attached as Schedule "C" hereto to be completed and filed by a Person setting forth the Claim (including a Class Claim) it is entitled to file and which shall include all supporting documentation in respect of such Claim.

"Proof of Claim Document Package" means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the DO&T Proof of Claim form, the Claimants' Guide to Completing the Proof of Claim form, the Claimants' Guide to Completing the DO&T Proof of Claim form, and such other materials as the Monitor, in consultation with Arctic Glacier, may consider appropriate or desirable.

"Proven Claim" means each of the Deemed Proven Claims and each Claim that has been proven in accordance with this Order.

"Purchaser" means Arctic Glacier LLC, formerly known as H.I.G. Zamboni, LLC, and its affiliates Arctic Glacier U.S.A., Inc. and Arctic Glacier Canada Inc.

"Trustee" means any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a trustee or *de facto* trustee of the Applicant Arctic Glacier Income Fund, in such capacity.

"U.S. Court" means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 15 Cases.

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Winnipeg, Manitoba, Canada, and any reference to an event occurring on a Calendar Day or a Business Day shall mean prior to 5:00 p.m. Winnipeg time on such Calendar Day or Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation", that all references to the singular herein include the plural, the plural include the singular, and that any gender includes all genders.

GENERAL PROVISIONS

5. THIS COURT ORDERS that the Monitor, in consultation with Arctic Glacier, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and the time in which they are submitted, and may, where it is satisfied that a Claim, a DO&T Claim or a DO&T Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of completion, execution and time of delivery of such forms. Further, the Monitor may request any further documentation from a Person that the Monitor, in consultation with Arctic Glacier, may require in order to enable it to determine the validity of a Claim, a DO&T Claim or a DO&T Indemnity Claim.

6. THIS COURT ORDERS that if any Claim, DO&T Claim or DO&T Indemnity Claim arose in a currency other than Canadian dollars, then the Person making the Claim, DO&T Claim or DO&T Indemnity Claim shall complete its Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim, as applicable, indicating the

amount of the Claim, DO&T Claim or DO&T Indemnity Claim in such currency, rather than in Canadian dollars or any other currency.

7. THIS COURT ORDERS that Claims, DO&T Claims and DO&T Indemnity Claims shall be claimed and paid in the currency in which they are owed and, to the extent that there are insufficient funds to pay a Claim, DO&T Claim and/or DO&T Indemnity Claim in the currency in which it is owed, the Monitor is hereby authorized to convert the currency at the Bank of Canada noon exchange rate on the date of the Initial Order.

8. THIS COURT ORDERS that a Person making a Claim, DO&T Claim or DO&T Indemnity Claim shall complete its Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim, as applicable, indicating the amount of the Claim, DO&T Claim or DO&T Indemnity Claim, including interest calculated to the Claims Bar Date.

9. THIS COURT ORDERS that the form and substance of each of the Notice to Claimants, Proof of Claim, Claimants' Guide to Completing the Proof of Claim, DO&T Proof of Claim, Claimants' Guide to Completing the DO&T Proof of Claim, DO&T Indemnity Proof of Claim, Notice of Revision or Disallowance and the Dispute Notice attached as Appendix "1" thereto, substantially in the forms attached as Schedules "B", "C", "C-2", "D", "D-2", "E" and "F" respectively to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with Arctic Glacier, may from time to time make non-substantive changes to such forms as the Monitor, in consultation with Arctic Glacier, considers necessary or advisable.

10. THIS COURT ORDERS that copies of all forms delivered by a Creditor or the Monitor hereunder, as applicable, shall be maintained by the Monitor and, subject to further order of the Court, the relevant Creditor will be entitled to have access thereto by appointment during normal business hours on written request to the Monitor.

11. THIS COURT ORDERS that consultation with the Chief Process Supervisor appointed pursuant to paragraph 25 of the Initial Order (the "CPS") shall satisfy any obligation of the Monitor in this Order to consult with Arctic Glacier and obtaining the

consent of the CPS shall satisfy any obligation of the Monitor in this Order to obtain the consent of Arctic Glacier. The protections provided to the CPS in the Initial Order and/or the Transition Order dated July 12, 2012, shall apply to any activities undertaken by the CPS in accordance with this Order.

MONITOR'S ROLE

12. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

13. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, other orders in the CCAA Proceeding, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Arctic Glacier Parties and any information provided by the Arctic Glacier Parties, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS

14. THIS COURT ORDERS that:

- (a) the Monitor shall, no later than two (2) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on the Monitor's Website;
- (b) the Monitor shall, no later than five (5) Business Days following the making of this Order, cause the Notice to Claimants to be published in (i) The Globe and Mail newspaper (National Edition) on one such day, (ii) the Wall Street

Journal (National Edition) on one such day, and (iii) the Winnipeg Free Press on one such day;

- (c) the Monitor shall, provided such request is received in writing by the Monitor prior to the Claims Bar Date, deliver, as soon as reasonably possible following receipt of a request therefor, a copy of the Proof of Claim Document Package to any Person requesting such material; and
- (d) the Monitor shall send to any Director, Officer or Trustee named in a DO&T Proof of Claim received on or before the Claims Bar Date a copy of such DO&T Proof of Claim, including copies of any documentation submitted to the Monitor by the Claimant making the DO&T Claim, as soon as practicable.

15. THIS COURT ORDERS that within seven (7) Business Days following the making of this Order, the Monitor shall send a Proof of Claim Document Package to all known Creditors based on the books and records of Arctic Glacier, except that, in respect of Class Claims, the Monitor shall send the Proof of Claim Document Package only to the Class Representative and, in respect of any other putative class actions, the Monitor shall send the Proof of Claim Document Package only to the first listed plaintiff's counsel on the originating process associated with that putative class action.

16. THIS COURT ORDERS that, except as otherwise set out in this Order or any other orders of the Court, neither the Monitor nor any Arctic Glacier Party is under any obligation to send or provide notice to any Person holding a Claim, a DO&T Claim or a DO&T Indemnity Claim, and without limitation, neither the Monitor nor any Arctic Glacier Party shall have any obligation to send or provide notice to any Person having a security interest in a Claim, DO&T Claim or DO&T Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of a Claim, DO&T Claim or DO&T Indemnity Claim), and all Persons shall be bound by any notices published pursuant to paragraphs 14(a) and 14(b) of this Order regardless of whether or not they received actual notice, and any steps taken

in respect of any Claim, DO&T Claim or DO&T Indemnity Claim in accordance with this Order.

17. THIS COURT ORDERS that the delivery of a Proof of Claim Document Package, Proof of Claim, DO&T Proof of Claim, or DO&T Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Arctic Glacier Parties or the Monitor of any liability of any Arctic Glacier Party or any Director, Officer or Trustee to any Person.

CLAIMS BAR DATE

Claims and DO&T Claims

18. THIS COURT ORDERS that Proofs of Claim and DO&T Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or DO&T Proof of Claim, as applicable, must be filed in respect of every Claim or DO&T Claim, regardless of whether or not a legal proceeding in respect of a Claim or DO&T Claim has been previously commenced.

19. THIS COURT ORDERS that any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such Claim against the Arctic Glacier Parties and all such Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Arctic Glacier Parties; (c) shall not be entitled to vote such Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice in and shall not be entitled to participate as a Claimant or Creditor in the CCAA Proceedings in respect of such Claim.

20. THIS COURT ORDERS that any Person that does not file a DO&T Proof of Claim as provided for herein such that the DO&T Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from

making or enforcing such DO&T Claim against any Directors, Officers or Trustees, and all such DO&T Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such DO&T Claim as against any other Person who could claim contribution or indemnity from any Directors, Officers or Trustees; (c) shall not be entitled to receive any distribution in respect of such DO&T Claim; and (d) shall not be entitled to any further notice in and shall not be entitled to participate as a Claimant or Creditor in the CCAA Proceedings in respect of such DO&T Claim.

DO&T Indemnity Claims

21. THIS COURT ORDERS that any Director, Officer or Trustee wishing to assert a DO&T Indemnity Claim shall deliver a DO&T Indemnity Proof of Claim to the Monitor so that it is received by no later than fifteen (15) Business Days after the date of deemed receipt of the DO&T Proof of Claim pursuant to paragraph 51 hereof by such Director, Officer or Trustee (with respect to each DO&T Indemnity Claim, the **"DO&T Indemnity Claims Bar Date"**).

22. THIS COURT ORDERS that any Director, Officer or Trustee that does not file a DO&T Indemnity Proof of Claim as provided for herein such that the DO&T Indemnity Proof of Claim is received by the Monitor on or before the applicable DO&T Indemnity Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such DO&T Indemnity Claim against any Arctic Glacier Party, and such DO&T Indemnity Claim shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such DO&T Indemnity Claim as against any other Person who could claim contribution or indemnity from an Arctic Glacier Party; and (c) shall not be entitled to vote such DO&T Indemnity Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution in respect of such DO&T Indemnity Claim.

Excluded Claims

23. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.

PROOFS OF CLAIM

24. THIS COURT ORDERS that each Person shall include any and all Claims it asserts against the Arctic Glacier Parties in a single Proof of Claim.

25. THIS COURT ORDERS that each Person shall include any and all DO&T Claims it asserts against one or more Directors, Officers or Trustees in a single DO&T Proof of Claim.

26. THIS COURT ORDERS that if a Person submits a Proof of Claim and a DO&T Proof of Claim in relation to the same matter, then that Person shall cross-reference the DO&T Proof Claim in the Proof of Claim and the Proof of Claim in the DO&T Proof of Claim.

DOJ CLAIM

27. THIS COURT ORDERS that the Government of the United States shall be deemed to have submitted a Proof of Claim in the amount of and on account of the DOJ Claim, and the Government of the United States does not need to take any further action to prove the DOJ Claim in this Claims Process unless it wishes to do so; provided, however, that this paragraph only addresses the rights of the United States Attorney's Office for the Southern District of Ohio and the U.S. Department of Justice Antitrust Division on account of the DOJ Claim, and nothing contained herein shall excuse any other United States federal or state agency from otherwise complying with the terms of this Order.

CLASS CLAIMS

28. THIS COURT ORDERS that the Class Representative in respect of the Direct Purchaser Litigation shall be deemed to have submitted a Proof of Claim on behalf of the Direct Purchaser Claimants in the principal amount of US\$10,000,000 plus applicable interest against the Applicants Arctic Glacier Income Fund, Arctic Glacier Inc. and Arctic Glacier International Inc. and such Claim shall be a Deemed Proven Claim.

29. THIS COURT ORDERS that the Class Representative in respect of the Canadian Retail Litigation may submit a Proof of Claim in respect of Claims of the Canadian Retail Litigation Claimants in the Canadian Retail Litigation for which they are Class Representative, indicating the amount claimed by such Canadian Retail Litigation Claimants and the basis of such Claim.

30. THIS COURT ORDERS that the Class Representative in respect of the Indirect Purchaser Litigation may submit a Proof of Claim in respect of Claims of the Indirect Purchaser Claimants set out in the Indirect Purchaser Litigation for which they are Class Representative, indicating the amount claimed by such Indirect Purchaser Claimants and the basis of such Claim.

31. THIS COURT ORDERS that, notwithstanding any other provisions of this Order, Canadian Retail Litigation Claimants and Indirect Purchaser Claimants are not required to file individual Proofs of Claim in respect of Claims relating solely to the Class Claims described in the Indirect Purchaser Litigation or Canadian Retail Litigation. However, any Canadian Retail Litigation Claimant or Indirect Purchaser Claimant may file a Proof of Claim to assert her claim individually and, in such event, such Canadian Retail Litigation Claimant or Indirect Purchaser Claimant shall be deemed to have elected not to authorize the Class Representative to include her Claim.

32. THIS COURT ORDERS that:

- (a) nothing contained in this Order shall prejudice the Arctic Glacier Parties' or the Monitor's rights to object to or otherwise oppose, on any and all bases, the validity and/or amount of any Class Claim that may be filed by the Canadian Retail Litigation Claimants or Indirect Purchaser Claimants in the CCAA Proceedings, including on the basis that the class cannot be certified under applicable law or the claim is not otherwise qualified as a Class Claim in the Claims Process established by this Order or further order of this Court;
- (b) nothing contained in this Order, this motion or the evidence submitted in the CCAA Proceedings is an admission or recognition of the Class

Representative's right to represent the Class for any other purpose other than filing a Proof of Claim on behalf of Canadian Retail Litigation Claimants or Indirect Purchaser Claimants and resolving such Claim in accordance with this Order or further order of the Court; and

- (c) this Order is without prejudice to the right of the Canadian Retail Litigation Claimants and Indirect Purchaser Claimants, their Class Representatives or their counsel, with leave of this Court, to seek an order in the Canadian Retail Litigation or Indirect Purchaser Litigation, as applicable, granting rights of representation in these CCAA Proceedings.

REVIEW OF PROOFS OF CLAIM & DO&T PROOFS OF CLAIM

33. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all Proofs of Claim and DO&T Proofs of Claim filed, and at any time:

- (a) may request additional information from a Claimant or Class Representative, as the case may be;
- (b) may request that a Claimant or Class Representative, as the case may be, file a revised Proof of Claim or DO&T Proof of Claim, as applicable;
- (c) may, (i) with the consent of the Arctic Glacier Parties and any Person whose liability may be affected or (ii) with Court approval in a further order of the Court and (iii) in respect of a Class Claim, subject to the approval of a court of competent jurisdiction over the Indirect Purchaser Litigation or Canadian Retail Litigation resolve and settle any issue or Claim arising in a Proof of Claim or DO&T Proof of Claim or in respect of a Claim or DO&T Claim; and
- (d) may, in consultation with Arctic Glacier with respect to the Proofs of Claim and the Directors, Officers and Trustees named in the applicable DO&T Proof of Claim with respect to the DO&T Proofs of Claim, as applicable, by

notice in writing, revise or disallow (in whole or in part) any Claim or DO&T Claim.

34. THIS COURT ORDERS that where a Claim or DO&T Claim has been accepted by the Monitor in accordance with this Order, such Claim or DO&T Claim shall constitute such Claimant's Proven Claim.

35. THIS COURT ORDERS that where a Claim or DO&T Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Claimant or, in the case of a Class Claim, to the Class Representative, a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

36. THIS COURT ORDERS that where a Claim or DO&T Claim has been revised or disallowed (in whole or in part), the revised or disallowed Claim or DO&T Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 41 to 47 hereof or as otherwise ordered by the Court.

REVIEW OF DO&T INDEMNITY PROOFS OF CLAIM

37. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all DO&T Indemnity Proofs of Claim filed, and at any time:

- (a) may request additional information from a Director, Officer or Trustee;
- (b) may request that a Director, Officer or Trustee file a revised DO&T Indemnity Proof of Claim;
- (c) may attempt to resolve and settle any issue or Claim arising in a DO&T Indemnity Proof of Claim or in respect of a DO&T Indemnity Claim;
- (d) may accept (in whole or in part) any DO&T Indemnity Claim; and
- (e) may, by notice in writing, revise or disallow (in whole or in part) any DO&T Indemnity Claim.

38. THIS COURT ORDERS that where a DO&T Indemnity Claim has been accepted by the Monitor in accordance with this Order, such DO&T Indemnity Claim shall constitute such Director, Officer or Trustee's Proven Claim.

39. THIS COURT ORDERS that where a DO&T Indemnity Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Director, Officer or Trustee a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

40. THIS COURT ORDERS that where a DO&T Indemnity Claim has been revised or disallowed (in whole or in part), the revised or disallowed DO&T Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 41 to 47 hereof or as otherwise ordered by the Court.

DISPUTE NOTICE

41. THIS COURT ORDERS that a Person who has received a Notice of Revision or Disallowance in respect of a Claim (including a Class Claim), a DO&T Claim or a DO&T Indemnity Claim who intends to dispute such Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor not later than the twenty-first (21st) Calendar Day following deemed receipt of the Notice of Revision or Disallowance pursuant to paragraph 51 of this Order. The filing of a Dispute Notice with the Monitor in accordance with this paragraph shall result in such Claim, DO&T Claim or DO&T Indemnity Claim being determined as set out in paragraphs 41 to 47 of this Order.

42. THIS COURT ORDERS that where a Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the time period provided therefor in paragraph 41 of this Order, the amount of such Claimant's Claim, DO&T Claim or DO&T Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount, if any, shall constitute such Claimant's Proven Claim, and the balance of such Claimant's Claim, DO&T Claim, or DO&T Indemnity Claim, if any, shall be forever barred and extinguished.

**RESOLUTION OF CLAIMS, DO&T CLAIMS AND DO&T INDEMNITY
CLAIMS**

43. THIS COURT ORDERS that, as soon as practicable after the delivery of the Dispute Notice in respect of a Claim or DO&T Claim to the Monitor, the Monitor shall attempt to resolve and settle the Claim or DO&T Claim with the Claimant or Class Representative, as applicable, in accordance with paragraph 33 of this Order.

44. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a DO&T Indemnity Claim to the Monitor, the Monitor shall attempt to resolve and settle the purported DO&T Indemnity Claim with the applicable Director, Officer or Trustee, in accordance with paragraph 37 of this Order.

45. THIS COURT ORDERS that in the event that 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.

46. THIS COURT ORDERS that any Claims and related DO&T Claims and/or DO&T Indemnity Claims shall be determined at the same time and in the same proceeding.

47. THIS COURT ORDERS that, notwithstanding any provision of this Order, in the event that a dispute is raised in a Dispute Notice in respect of any Class Claim made on behalf of the Indirect Purchaser Claimants in the Indirect Purchaser Litigation, the Monitor shall appoint a special claims officer for the purpose of determining such dispute, which special claims officer:

- (a) is a lawyer resident and licensed to practice in the United States of America;
- (b) has substantial experience as counsel in U.S. antitrust class actions; and
- (c) is acceptable to each of the Arctic Glacier Parties, the Monitor and the applicable Class Representative, provided that, should the parties fail to agree

on a special claims officer within a reasonable time, the Monitor shall apply for directions pursuant to this Order to appoint a special claims officer with the qualifications set out in subparagraphs (a) and (b).

NOTICE OF TRANSFEREES

48. THIS COURT ORDERS that neither the Monitor nor the Arctic Glacier Parties shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, DO&T Claim or DO&T Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, DO&T Claim or DO&T Indemnity Claim. Any such transferee or assignee of a Claim, DO&T Claim or DO&T Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, DO&T Claim or DO&T Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

49. THIS COURT ORDERS that the transferee or assignee of any Claim, DO&T Claim or DO&T Indemnity Claim (i) shall take the Claim, DO&T Claim or DO&T Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, DO&T Claim or DO&T Indemnity Claim, and subject to the rights of the Arctic Glacier Parties and any Director, Officer or Trustee against any such transferor or assignor, including any rights of set-off which any Arctic Glacier Party, Director, Officer or Trustee had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, DO&T Claim or DO&T Indemnity Claim to reduce any amount owing by the transferee or assignee to an Arctic Glacier Party, Director, Officer or Trustee, whether by way of set off, application, merger, consolidation or otherwise.

DIRECTIONS

50. THIS COURT ORDERS that the Monitor, the Arctic Glacier Parties and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, the DO&T Indemnity Proof of Claim, the Notice of Revision or Disallowance, and any letters, notices or other documents to Claimants, Directors, Officers, Trustees, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Arctic Glacier Parties or set out in such Person's Proof of Claim, DO&T Proof of Claim or DO&T Indemnity Proof of Claim. Any such service or notice shall be deemed to have been received: (i) if sent by ordinary mail, on the fourth Business Day after mailing; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic transmission by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or on a day other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 51, Notices of Revision or Disallowance shall be sent only by (i) email or facsimile to an address or number or email address that has been provided in writing by the Claimant, Director, Officer or Trustee, or (ii) courier.

52. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, DO&T Proofs of Claims, DO&T Indemnity Proofs of Claim and Dispute Notices) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be

sufficiently given only if delivered by prepaid ordinary mail, prepaid registered mail, courier, personal delivery or electronic transmission addressed to:

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

53. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic transmission in accordance with this Order.

54. THIS COURT ORDERS that, in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amendment.

MISCELLANEOUS

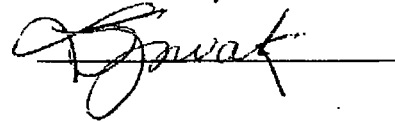
55. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, DO&T Claims, DO&T Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, DO&T Claims, DO&T

Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan or further order of the Court and the class or classes of Creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further order of the Court.

56. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors, Officers or Trustees or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Arctic Glacier Parties' insurance and any Director's, Officer's and/or Trustee's liability insurance policy or policies that exist to protect or indemnify the Directors, Officers, Trustees and/or other persons, whether such recourse or payment is sought directly by the Person asserting a Claim or a DO&T Claim from the insurer or derivatively through the Director, Officer, Trustee or any Arctic Glacier Party; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or DO&T Claim or portion thereof for which the Person receives payment directly from or confirmation that she is covered by the Arctic Glacier Parties' insurance or any Director's, Officer's or Trustee's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors, Officers, Trustees and/or other Persons shall not be recoverable as against an Arctic Glacier Party or Director, Officer or Trustee, as applicable.

57. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, including the United States Bankruptcy Court for the District of Delaware, or in any other foreign jurisdiction, to give effect to this Order and to assist the Arctic Glacier Parties, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Arctic Glacier Parties and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign

proceeding, or to assist the Arctic Glacier Parties and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read "G. Swak", written over a horizontal line.

CERTIFIED A TRUE COPY

A handwritten signature in cursive script, appearing to read "Miller", written over the text "DEPUTY REGISTRAR".

DEPUTY REGISTRAR

TAB C

**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 APPENDIX "A" HERETO
(COLLECTIVELY, "THE APPLICANTS")**

**SUPPLEMENT TO THE SEVENTEENTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.
OCTOBER 15, 2014**

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1.0 INTRODUCTION

- 1.1 On August 26, 2014, the Monitor filed the seventeenth report (the “**Seventeenth Report**”) in the CCAA Proceedings. Section 5.9 of the Seventeenth Report provides that the Monitor will file a report that will provide an update with respect to, among other things, delays to the anticipated Plan Implementation Date. This supplement is made in reference to the Seventeenth Report. Capitalized terms not otherwise defined herein are as defined in the Applicants’ consolidated plan of compromise or arrangement dated May 21, 2014, as amended on August 26, 2014 and as may be further amended, supplemented or restated from time to time in accordance with the terms therein (the “**Plan**”).

2.0 PURPOSE OF THE SUPPLEMENT TO THE SEVENTEENTH REPORT

- 2.1 The purpose of this supplement to the Seventeenth Report is to provide this Honourable Court with an update regarding the Plan Implementation Date.

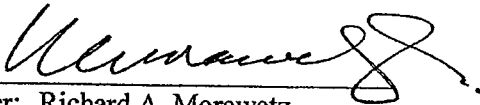
3.0 PLAN IMPLEMENTATION DATE

- 3.1 As described in the fifteenth report of the Monitor dated May 14, 2014 and in the Seventeenth Report, the anticipated Plan Implementation Date was October 15, 2014. However, implementation of the Plan is subject to the fulfillment of various conditions precedent. The Monitor and the Applicants continue to work diligently towards satisfying all conditions precedent to Plan implementation. The Monitor will be providing stakeholders with additional information in the form of a court report in the next few weeks with respect to the progress made in satisfying these conditions precedent and the new anticipated Plan Implementation Date.

3.2 Arctic Glacier Income Fund disclosed the information contained herein by way of a press release on October 15, 2014 (attached as Appendix "B" hereto).

All of which is respectfully submitted to this Honourable Court this 15th day of October, 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"

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.

APPENDIX "B"

Arctic Glacier Income Fund Provides Update on Plan Implementation

WINNIPEG, October 15, 2014 – Arctic Glacier Income Fund (CNSX:AG.UN) (the “Fund”) announced today that the Fund and certain of its subsidiaries (collectively, the “Applicants”) have postponed implementation of the consolidated plan of compromise or arrangement dated May 21, 2014, as amended (the “Plan”).

As described in the fifteenth and seventeenth reports of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (the “Monitor”) of the Applicants, dated May 14, 2014 and August 26, 2014, respectively, the anticipated date of Plan implementation was October 15, 2014. However, implementation of the Plan is subject to the fulfillment of various conditions precedent. The Monitor and the Applicants continue to work diligently towards satisfying all conditions precedent to Plan implementation. The Monitor will be providing stakeholders with additional information in the form of a court report in the next few weeks with respect to the progress made in satisfying these conditions precedent and the new anticipated date of Plan implementation.

More information about the Arctic Glacier Parties’ CCAA proceeding under the *Companies’ Creditors Arrangement Act* can be found on the website of Alvarez & Marsal Canada Inc., the Court-appointed monitor, at <http://www.alvarezandmarsal.com/arctic-glacier-income-fund-arctic-glacier-inc-and-subsidiaries>.

Forward-Looking Statements

Certain statements included herein constitute “forward-looking statements”. All statements, other than statements of historical fact, included in this release that address future activities, events, developments or financial performance are forward-looking statements. These forward-looking statements can be identified by the use of forward-looking words such as “may”, “should”, “will”, “could”, “expect”, “intend”, “plan”, “estimate”, “anticipate”, “believe”, “future” or “continue” or the negative thereof or similar variations. These forward-looking statements are based on certain assumptions and analyses made by the Fund and its management, in light of their experiences and their perception of historical trends, current conditions and expected future developments, as well as other factors they believe are appropriate in the circumstances. Investors are cautioned not to put undue reliance on such forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties, assumptions and other factors, many of which are outside the control of the Fund, which could cause actual results to differ materially from those expressed or implied by such forward-looking statements. Important factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements include, among other things, the CCAA process. Readers are cautioned that the foregoing list is not exhaustive. Such forward-looking statements should, therefore, be construed in light of such factors. If any of these risks or uncertainties were to materialize, or if the factors and assumptions underlying the forward-looking information were to prove incorrect, actual results could vary materially from those that are expressed or implied by the forward-looking information contained herein. All forward-looking statements attributable to the Fund, or persons acting on its behalf, are expressly qualified in their entirety by the cautionary statements set forth above. Readers are cautioned not to place undue reliance

on forward-looking statements contained herein, which reflect the analysis of the management of the Fund, as appropriate, only as of the date of this release. For more information regarding these and other risks, readers should consult the Fund's reports on file with applicable securities regulatory authorities accessible online by going to SEDAR at www.sedar.com. The Fund is under no obligation, and the Fund expressly disclaims any intention or obligation, to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

About the Fund

Arctic Glacier Income Fund trust units are listed on the Canadian National Stock Exchange under the trading symbol AG.UN. There are 350.3 million trust units outstanding.

TAB D

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 APPENDIX "A" HERETO
(COLLECTIVELY, "THE APPLICANTS")

NINETEENTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.
NOVEMBER 7, 2014

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1.0 INTRODUCTION

- 1.1 Pursuant to an order of The Court of Queen's Bench (Winnipeg Centre) (the "**Canadian 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 the "**Applicants**", together with Glacier Valley Ice Company L.P., the "**Arctic Glacier Parties**") 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**". The CCAA Proceedings were subsequently recognized as a foreign main proceeding (the "**Recognition Order**") by the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") on March 16, 2012.
- 1.2 The Monitor has previously filed eighteen reports with the Canadian Court. Capitalized terms used but not otherwise defined in this report (the "**Nineteenth Report**") are as defined in the orders previously granted by, or in the reports previously filed by the Monitor with, the Canadian Court, and the Applicants' consolidated plan of compromise or arrangement dated May 21, 2014, as amended on August 26, 2014 and as may be further amended, supplemented or restated from time to time in accordance with the terms therein (the "**Plan**"). A copy of the Plan is attached as Appendix "B".

- 1.3 The Sale Transaction for substantially all of the Arctic Glacier Parties' business and assets closed on July 27, 2012. The business formerly operated by the Arctic Glacier Parties continues to be carried on by the Purchaser (Arctic Glacier, LLC, formerly H.I.G. Zamboni, LLC). In addition, the Monitor continues to hold significant funds for distribution.
- 1.4 On September 5, 2012, the Canadian Court issued an order approving a claims process (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 Claims Procedure Order provided for a Claims Bar Date of October 31, 2012 in respect of the Proofs of Claim and the DO&T Proofs of Claim. The U.S. Bankruptcy Court recognized the Claims Procedure Order by Order dated September 14, 2012.
- 1.5 The Claims Procedure Order contemplated a further order of the Court to provide an appropriate process for resolving disputed Claims. Accordingly, on March 7, 2013, the Canadian Court issued an order (the "**Claims Officer Order**") to that effect. The Claims Officer Order, among other things, provided that, in the event that a dispute raised in a Notice of Dispute 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 Creditor, the Monitor shall refer the dispute raised in the Notice of Dispute to either a Claims Officer or to the Court.

- 1.6 On May 21, 2014, the Canadian Court issued an order (the “**Meeting Order**”) in respect of the Plan. On June 6, 2014, the U.S. Bankruptcy Court entered an Order recognizing and giving full force and effect in the United States to the Meeting Order.
- 1.7 Following the deemed Creditors’ Meeting and the Unitholders’ Meeting held on August 11, 2014, the Canadian Court issued an order on September 5, 2014 that, among other things, sanctioned and approved the Plan (the “**Sanction Order**”), which is attached as Appendix “C”. On September 16, 2014, the U.S. Bankruptcy Court entered an Order recognizing and giving full effect in the United States to the Sanction Order. A copy of this U.S. Bankruptcy Court Order is attached as Appendix “D”.
- 1.8 As more particularly described in the Seventeenth Report of the Monitor dated August 26, 2014 (the “**Seventeenth Report**”), the Monitor noted that:
- a) the implementation of the Plan is conditional upon the fulfillment of certain conditions precedent on or prior to the Plan Implementation Date;
 - b) one of the conditions precedent to implementation of the Plan is that the Monitor and the CPS be satisfied that (i) all tax returns required to be filed by or on behalf of the Arctic Glacier Parties have or will be duly filed in all appropriate jurisdictions; and (ii) all taxes required to be paid in respect thereof have or will be paid (the “**10.3(d) Condition**”);
 - c) based on the enquiries made by the Monitor, the Monitor became aware that certain of the Arctic Glacier Parties did not file required sales tax returns (and in some cases,

obtain associated documents in respect thereof) or collect and remit required sales taxes in certain U.S. states and localities (the “**Outstanding States**”) where the Arctic Glacier Parties conducted business and completed sales (the “**Sales Tax Issue**”);

- d) the Monitor and the Arctic Glacier Parties planned to investigate the Sales Tax Issue and determine whether such sales tax returns ought to have been filed, whether any sales tax liabilities for the Arctic Glacier Parties exist and remain outstanding, and what measures, if any, would be necessary to address the Sales Tax Issue; and
- e) the Monitor would file a subsequent report to provide an update in respect of the Sales Tax Issue and its impact, if any, on the Plan, including, without limitation, the various reserves contemplated in the Plan and any consequent delay in the then anticipated Plan Implementation Date of October 15, 2014.

- 1.9 On October 15, 2014, the Monitor issued the Supplement to the Seventeenth Report of the Monitor (the “**Seventeenth Report Supplement**”), which advised stakeholders that certain conditions precedent to the Plan Implementation Date had not been fulfilled, that the Monitor and the Applicants continued to work diligently towards satisfying all conditions precedent to Plan implementation, and that the Monitor would provide additional information to stakeholders in the form of a court report in the following weeks. A copy of the Seventeenth Report Supplement is attached hereto as Appendix “E”.

1.10 The purpose of this Nineteenth Report is to provide the Canadian Court, the U.S. Bankruptcy Court, Affected Creditors, Unitholders and other interested parties with:

- a) information regarding the status of the fulfillment of conditions precedent to implementation of the Plan;
- b) an update in respect of the Sales Tax Issue and its impact on the anticipated Plan Implementation Date;
- c) information in support of the Monitor's motion, filed in its capacity as foreign representative of the Arctic Glacier Parties, returnable December 12, 2014 in the U.S. Bankruptcy Court for an order, among other things (the "**U.S. Plan Implementation Order**"), the proposed form of which is attached hereto as Appendix "F"):
 - a. establishing reserves that will limit the maximum claim of various U.S. state and local sales taxing authorities in the Outstanding States (the "**Taxing Authorities**") for asserted sales taxes and/or associated interest and penalties, and approving the noticing procedures and deadlines for the Taxing Authorities to dispute the determination of such reserves;
 - b. approving the form and manner of notice provided to such Taxing Authorities;
 - c. declaring that the process followed by the Monitor and the CPS to ascertain potential sales tax liability, and the steps taken by the Monitor and the CPS to address any outstanding sales tax obligations and liabilities, are:

- i. sufficient to fulfill the 10.3(d) Condition (as defined herein); and
 - ii. fair and reasonable under the circumstances, consistent with the Monitor's and the CPS's duties under the Initial Order, the Recognition Order and applicable U.S. law, and is in the best interests of the Arctic Glacier Parties, the Taxing Authorities, the creditors of the Arctic Glacier Parties, the Unitholders and all other parties with an interest in the CCAA Proceedings and the concurrent Chapter 15 Proceedings;
 - d. providing that the contents of Confidential Appendix "G", as described further herein, be sealed, kept confidential and not form part of the public record; and
 - e. providing related relief; and
 - d) information regarding the anticipated Plan Implementation Date, assuming that the U.S. Plan Implementation Order is granted on December 12, 2014.
- 1.11 The Monitor will be preparing and serving a separate report prior to November 25, 2014 to provide the Canadian Court, the U.S. Bankruptcy Court, Affected Creditors, Unitholders and other interested parties with updated information in respect of, among other things, the proposed extension of the stay of proceedings, the funds available for distribution to Unitholders and the activities of the Monitor.
- 1.12 Further information regarding the CCAA Proceedings and the concurrent Chapter 15 Proceedings, and all previous reports of the Monitor, can be found on the Monitor's

website at <http://www.alvarezandmarsal.com/arctic-glacier-income-fund-arctic-glacier-inc-and-subsidiaries>.

2.0 TERMS OF REFERENCE

2.1 In preparing this Nineteenth Report, the Monitor has necessarily relied upon unaudited financial and other information supplied, and representations made, by certain former senior management of the Arctic Glacier Parties, including the Arctic Glacier Parties' former Director of Tax ("**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 provided by Senior Management. The steps taken by the Monitor to obtain the information set out in this Nineteenth Report are set out in detail below.

2.2 Certain of the information referred to in this Nineteenth Report consists of "forward-looking information" within the meaning of applicable securities laws, including 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. Any future-oriented financial information and forward-looking statements are not guarantees of future events and involve risks and uncertainties that are difficult to predict. Any future-oriented financial information referred to in this Nineteenth Report was, in part, 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 may vary from the projections, and such variations could be material.

2.3 The information contained in this Nineteenth Report is not intended to be relied upon by any investor in any transaction with the Arctic Glacier Parties or in relation to any transfer or assignment of the Trust Units of AGIF.

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

3.0 CONDITIONS PRECEDENT TO IMPLEMENTATION OF THE PLAN

Background

3.1 As set out in the Fifteenth Report of the Monitor dated August 7, 2014 (the "Fifteenth Report"), the Plan was developed by the Monitor, the Arctic Glacier Parties and their respective counsel and financial and tax advisors, including KPMG LLP. The Fifteenth Report provides detailed information about the Plan. As described in the Seventeenth Report, certain amendments were made to the Plan after the Creditors' Meeting and Unitholders' Meeting. The amendments were made to clarify distribution and payment mechanics and were required to give better effect to the implementation of the Plan and

the Sanction Order. Updated information in respect of certain aspects of the Plan, specifically as it relates to the status of the conditions precedent to Plan implementation and the anticipated Plan Implementation Date, is provided in this Nineteenth Report.

- 3.2 Implementation of the Plan is conditional upon the fulfillment of certain conditions precedent on or prior to the Plan Implementation Date. As of the date of this Nineteenth Report, all of these conditions have been fulfilled, except the 10.3(d) Condition. Subject to the satisfaction or waiver of the conditions precedent to Plan implementation and certain reserves set out in the Plan, the Plan provides for the distribution of Available Funds now held by the Monitor to creditors to the extent of their Proven Claims and for the distribution of any surplus of the Available Funds to Unitholders.

Status of the 10.3(d) Condition

- 3.3 At the time of the Seventeenth Report, the Monitor and the CPS were in the process of investigating the Sales Tax Issue in order to satisfy the 10.3(d) Condition in a timely manner.
- 3.4 In this investigation and pursuant to the court-approved Transition Services Agreement, the Monitor obtained historical sales and certain U.S. state sales tax information, as further described herein, from the Purchaser's (hereinafter referred to as "New Arctic Glacier") Chief Accounting Officer, who was previously employed as the Arctic Glacier Parties' Director of Tax. Additionally, the Applicants retained the Genetelli Consulting Group ("Genetelli"), a U.S. tax consultant firm comprised of tax law attorneys and

specialists, to review and provide advice in respect of the U.S. state sales tax position of the Arctic Glacier Parties in certain U.S. states. Based on such information and advice, as well as certain of the Annual Reports of the Arctic Glacier Parties, the Monitor notes the following:

- a) the Arctic Glacier Parties that were established and conducted business in the United States (collectively, the “U.S. Arctic Glacier Parties”) had approximately \$677 million in sales (the “Total Sales”) during the period of January 1, 2009 to July 27, 2012 (the “Data Period¹”);
- b) of the Total Sales, approximately \$598.7 million, representing approximately 88.4% of the Total Sales, were made in U.S. states that do not impose sales taxes and/or were reported by the applicable U.S. Arctic Glacier Parties by way of filed sales tax returns, and all taxes required to be paid in respect thereof have been paid by the applicable U.S. Arctic Glacier Parties;
- c) of the Total Sales, approximately \$78.3 million, representing approximately 11.6% of the Total Sales, were not reported by the applicable U.S. Arctic Glacier Parties by way of filed sales tax returns (the “Reviewable Sales²”);

¹ The Monitor notes that sales information for the U.S. Arctic Glacier Parties prior to January 1, 2009 is not readily available. Additionally and as described earlier, the Monitor notes that the Sale Transaction for substantially all of the Arctic Glacier Parties’ business and assets closed on July 27, 2012, the last day of the Data Period.

² In addition to sales of ice, Reviewable Sales include sales of equipment by ICEsurance Inc. and royalty income generated by Ice Perfection Systems Inc. from licensing the use of the Arctic Glacier logo in various U.S. states.

- d) approximately \$72.0 million of the Reviewable Sales (or 91.9%) appear to be exempt from sales tax based on an exemption that is generally available in respect of sales of ice made for resale (as more particularly described herein); and
- e) the balance of the Reviewable Sales (approximately \$6.3 million, representing less than 1% of Total Sales) are potentially subject to sales tax, depending on the applicable laws of the various U.S. states.

3.5 The information reviewed by the Monitor demonstrated that the U.S. Arctic Glacier Parties, in the vast majority of cases, complied with their respective obligations to file sales tax returns and pay sales taxes in respect thereof during the Data Period. As noted above, the Sales Tax Issue is limited to a very small percentage of Reviewable Sales (approximately 8% of the Reviewable Sales and less than 1% of the Total Sales). The Monitor and the CPS are not aware of any concerns regarding the payment of any other types of taxes or the non-filing of any other types of tax returns that have not, or will not, be dealt with pursuant to the Plan, the Orders granted in the CCAA Proceedings and the concurrent Chapter 15 Proceedings, or otherwise. As such, the Monitor and the CPS have concluded that achieving a satisfactory resolution to the Sales Tax Issue, as proposed herein, is sufficient to satisfy the 10.3(d) Condition in the Plan.

3.6 Since August 26, 2014, the date of the Seventeenth Report, the Monitor and the CPS have continued to investigate the Sales Tax Issue and take steps towards fulfilling the 10.3(d) Condition in a practical and efficient manner. The Monitor and the CPS' analysis of the

Sales Tax Issue and their proposed approach for fulfilling the 10.3(d) Condition are described in this Nineteenth Report.

- 3.7 In addition and as more particularly described in this Nineteenth Report, the Monitor notes that it did not receive any Proofs of Claim or DO&T Proofs of Claim from Taxing Authorities in the Outstanding States in respect of sales taxes of the Identified U.S. AG Parties (as defined herein) prior to the Claims Bar Date. The Taxing Authorities were advised of the Claims Bar Date either directly or pursuant to the various court-approved newspaper publications under the Claims Procedure Order. The Plan also provides for a release of Claims, including Claims that have been barred or extinguished pursuant to the Claims Procedure Order or the Claims Officer Order. All Taxing Authorities known to the Monitor at the time (including all state Taxing Authorities) were served with materials in connection with the Plan, the Sanction Order and the U.S. Order recognizing and giving full effect in the United States to the Sanction Order. Accordingly, the Monitor and the Applicants are reserving all rights provided for in the Claims Procedure Order and the Claims Process Order with respect to the Taxing Authorities' claims that cannot be resolved consensually.

4.0 SALES TAX ISSUE AND PROPOSED APPROACH TO THE 10.3(D) CONDITION

Background

- 4.1 In conducting due diligence in respect of the 10.3(d) Condition, the Monitor made numerous inquiries of New Arctic Glacier, as the holder of the books and records of the

Applicants. Through such inquiries, as more particularly described below, it came to the Monitor's attention that certain of the U.S. Arctic Glacier Parties (collectively, the "Identified U.S. AG Parties"):

- a) may not have complied with sales tax³ return filing requirements in certain U.S. states; and/or
- b) may have incurred sales tax liabilities in certain U.S. states that remain outstanding.⁴

Process for Determining the Identified U.S. AG Parties

- 4.2 The Monitor, in consultation with the CPS, implemented and followed the process and procedures set out below to determine the Identified U.S. AG Parties.
- 4.3 The Monitor requested that New Arctic Glacier provide it with certain information to enable it to determine the existence of any potential outstanding sales tax obligations of any of the U.S. Arctic Glacier Parties.
- 4.4 In response to this request, the Arctic Glacier Parties' former Director of Tax provided the Monitor with certain information, including the following in respect of the U.S. Arctic Glacier Parties:

³ Any reference to "sales tax" herein includes transaction privilege tax in the state of Arizona and general excise tax in the state of Hawaii, which are imposed in those respective states instead of a sales tax.

⁴ In such instances, sales taxes would not have been collected and remitted.

- a) schedules setting out sales during the Data Period, segregated by U.S. Arctic Glacier Party and U.S. state (collectively, the “Sales Schedules”);
- b) detailed information with respect to the sales transactions of each of the U.S. Arctic Glacier Parties during the Data Period, segregated by division and U.S. state (collectively, the “Sales Transaction Detail”);
- c) a schedule of the divisions, indicating which of the U.S. Arctic Glacier Parties each belonged to; and
- d) schedules of the U.S. states in which each of the U.S. Arctic Glacier Parties filed U.S. sales tax returns during the Data Period.

4.5 As the 10.3(d) Condition incorporates both a “filing” component and a “payment” component, the Monitor and the CPS concluded that the 10.3(d) Condition is only concerned with Reviewable Sales of the Identified U.S. AG Parties in those Outstanding States that impose sales taxes (a list of which is attached hereto as Appendix “H”).

4.6 The Monitor analyzed such Reviewable Sales of the Identified U.S. Arctic Glacier Parties and discovered that, in certain instances, sales were recorded as having been made in the incorrect state for the applicable company. The Arctic Glacier Parties’ former Director of Tax advised that this was due to incorrect customer addresses having been entered into the accounting system in certain instances. In such cases, the applicable sales were reclassified by the Monitor to the correct U.S. state, following discussions with the Arctic Glacier Parties’ former Director of Tax.

The Concept of "Nexus"

- 4.7 The Monitor is advised by Genetelli that nexus is a legal concept that refers to the minimum level of connection that must exist so as to permit a U.S. state to require a seller to register for and file sales tax returns in the respective U.S. state. The Monitor is also advised by Genetelli that while the minimum level of connection that must exist to constitute nexus differs across the U.S. states, the threshold that must be satisfied to establish such a minimum level of connection is relatively low.
- 4.8 Accordingly, nexus is important for determining the scope of any potential sales tax obligations of the Identified U.S. AG Parties in respect of the Reviewable Sales, as its presence or absence is a key factor in determining whether a requirement exists to register for and file sales tax returns and collect and remit sales taxes. Because the determination of nexus is based on a multi-faceted test that differs across the U.S. states, it is unclear whether nexus exists for each of the Identified U.S. AG Parties in each of the Outstanding States. However, the maximum possible claim of the Taxing Authorities in respect of sales tax remittance obligations would occur if nexus existed for each of the Identified U.S. AG Parties in each of the Outstanding States.

Sales Categorization

- 4.9 Based on advice received from Genetelli, the next step taken by the Monitor was to review and categorize the Reviewable Sales to determine the likelihood that such sales would result in a sales tax liability of the Identified U.S. AG Parties. Based on a review

of the customer name shown in the Sales Transaction Detail provided by New Arctic Glacier, the Monitor categorized the Reviewable Sales into the following categories (collectively, the "Sales Categories"):

- a) "sales directly to the end user";
- b) "sales made for resale"; or
- c) "sales to Third Party Service Providers," being sales to restaurants, golf courses and other similar entities that use ice for a variety of purposes in the operation of such businesses.

4.10 Based on advice received from Genetelli, the Monitor understands that the sales tax treatment differs in respect of each of the aforementioned Sales Categories as follows:

- a) Sales Directly to End Users: Sales of ice directly to an end user (who is not a Third Party Service Provider) for human consumption or for other purposes may be taxable in certain Outstanding States and the sales tax treatment of such sales varies across the Outstanding States. Where such sales are made, sales tax returns should be filed by the seller, and where such sales are taxable, sales taxes should be collected and remitted to the applicable Taxing Authority by such seller.
- b) Sales Made for Resale: Sales of ice made to customers who are, in turn, re-selling it to their customers, are not taxable for sales tax purposes in the Outstanding States,

provided that such resale intention can be evidenced by documentation acceptable to the applicable Taxing Authority.⁵

- c) Sales to Third Party Service Providers: Sales of ice to Third Party Service Providers may be taxable in certain Outstanding States and the sales tax treatment of such sales varies across the Outstanding States. Where such sales are made, sales tax returns should be filed by the seller, and where such sales are taxable, sales taxes should be collected and remitted to the applicable Taxing Authority by such seller.

Approach to the Various Sales Categories

Sales Directly to End Users and Sales to Third Party Service Providers

- 4.11 The Monitor was advised by Genetelli that there is a lack of uniform tax treatment regarding sales of ice directly to end users and to Third Party Service Providers across the Outstanding States. In addition, there is a relatively small amount of potential sales taxes at issue compared to the costs that would be incurred in determining this issue on a state-by-state basis. Accordingly, for the sole purpose of setting aside sufficient funds to satisfy any potential outstanding sales tax liability pursuant to the process proposed below in this Nineteenth Report, in order to comply with the 10.3(d) Condition, the Monitor and the CPS estimated the maximum possible claim of the Taxing Authorities in

⁵ The treatment described above is applicable to "sales made for resale" in each of the Outstanding States except for Hawaii. Under the Hawaii general excise tax, manufacturers are generally taxed on wholesale (i.e., resale) transactions at the reduced rate of 0.5%.

respect of sales tax remittance obligations on the basis that nexus existed for each of the Identified U.S. AG Parties that incurred such sales in each of the Outstanding States and that all such sales are taxable.

Sales Made for Resale

- 4.12 The Monitor has not set aside funds for potential sales taxes on sales of ice for resale given that such sales, in the circumstances described above, are not taxable. In order to determine which sales would fall into this category, the Monitor categorized sales of ice as sales made for resale only when the customer name shown in the Sales Transaction Detail and other readily available information clearly demonstrated that such sales were to groceries, supermarkets or other stores that resell ice to customers for consumption.
- 4.13 Taxing authorities generally require evidence that sales were made for resale. Genetelli has advised that evidence that sales were indeed for resale is often provided in the form of resale certificates obtained from customers at the time of conducting business with such customer. However, Genetelli has also advised that Taxing Authorities will generally accept other forms of evidence as well, including sales invoices and details regarding the purchaser of the ice. In addition, Genetelli has advised that, on audit, Taxing Authorities will provide a period of time during which a taxpayer may obtain resale certificates from customers in cases where they may not have already been obtained, or provide alternative evidence in lieu of such resale certificates.

- 4.14 The Monitor was advised by the Arctic Glacier Parties' former Director of Tax that historical sales invoices, and certain other documents, can be provided from the Arctic Glacier Parties' books and records. Accordingly, it is reasonable to conclude that in the event Taxing Authorities request evidence supporting the sales made by the Identified U.S. AG Parties for resale, such evidence can be produced, albeit this would undoubtedly be a time consuming and costly exercise.

Quantitative Results of the Monitor's Sales Tax Analysis

- 4.15 As described above, the Monitor has reviewed the sales directly to end users and to Third Party Service Providers by the Identified U.S. AG Parties in the Outstanding States, sales made in Hawaii (all of which were for resale), where Genetelli has advised the Monitor that such sales are taxable at a reduced wholesale rate, and sales of equipment by ICEsurance Inc. Based on the information obtained from New Arctic Glacier, the Monitor estimates that the aggregate value of such sales totals approximately \$6.3 million⁶ (representing less than 1% of Total Sales).
- 4.16 A schedule that provides a breakdown of such sales directly to end users and to Third Party Service Providers during the Data Period by applicable Identified U.S. AG Party and Outstanding State is included in Confidential Appendix "G".

⁶ Based on advice received from Genetelli, this figure does not include royalty income generated by Ice Perfection Systems Inc. from licensing the use of the Arctic Glacier logo in various U.S. states.

- 4.17 In order to estimate the maximum potential aggregate outstanding sales tax liability of the Identified U.S. AG Parties for the sole purpose of setting aside sufficient funds to satisfy any potential outstanding sales tax liability pursuant to the process proposed below in this Nineteenth Report, the Monitor required (a) sales tax, penalty and interest rates of the Outstanding States; and (b) a determination of an appropriate period of time over which such estimate should be calculated.

Applicable Sales Tax, Penalty and Interest Rates

- 4.18 Genetelli provided the Monitor with the sales tax rates in each of the Outstanding States, as well as the rates imposed for penalties and interest potentially chargeable in each of the Outstanding States in respect of the failure to duly collect and remit sales taxes and file sales tax returns. The various tax rates provided by Genetelli, and utilized by the Monitor in determining the estimated amount of potential sales tax liability in each of the Outstanding States, were the highest combined state and local tax rates at the time the information was provided to the Monitor.⁷

Liability Look-Back Periods Based on the Voluntary Disclosure Process

- 4.19 Genetelli has advised that taxpayers in the Outstanding States may apply for participation in a voluntary disclosure process (a “Voluntary Disclosure Process”). Under a

⁷ A charge for sales tax generally consists of a state tax component and a local tax component. Local tax rates generally vary within a state. To be conservative, the highest combined state and local tax rates were used for all sales in a state.

Voluntary Disclosure Process, taxpayers contact sales tax authorities and attempt to negotiate agreements whereby the taxpayer agrees to file returns (or provide return information) and pay tax arrears for a limited number of years, often referred to as the “look-back period”. In return, the taxing authorities typically agree to waive unpaid taxes potentially owing for years prior to the look-back period, as well as all penalties that could have otherwise been imposed.

- 4.20 Genetelli has advised that eligibility requirements and circumstances for taxpayers to utilize the Voluntary Disclosure Process vary among the Outstanding States. Following a review of the information provided by the Arctic Glacier Parties’ former Director of Tax and Genetelli’s advice regarding general Voluntary Disclosure Process eligibility requirements in the Outstanding States, nothing has come to light that would, in the view of the Monitor or Genetelli, disqualify any of the Identified U.S. AG Parties from participating in the Voluntary Disclosure Process in any of the Outstanding States.
- 4.21 Accordingly, Genetelli provided the Monitor with a schedule setting out the typical look-back periods under the Voluntary Disclosure Process in each of the Outstanding States, which is attached hereto as Appendix “I”. The Monitor, in consultation with the CPS, used these U.S. State specific look-back periods as a proxy for the appropriate period of time that should be considered in calculating the potential aggregate outstanding sales tax liability of the Identified U.S. AG Parties in each of the Outstanding States (the “Liability Look-Back Periods”). The Monitor believes that applying the U.S. state specific look-back periods under the Voluntary Disclosure Process as the basis for the

Liability Look-Back Periods is fair and reasonable given that the Voluntary Disclosure Process would most likely have been available to each of the Identified U.S. AG Parties in each of the applicable Outstanding States.

- 4.22 The Monitor and the CPS further note that they fully and carefully considered utilizing the Voluntary Disclosure Process to resolve the Sales Tax Issue. However, for reasons more particularly described below, it became apparent to the Monitor and the CPS that the Voluntary Disclosure Process would not be an appropriate means to deal with the Sales Tax Issue given the unique circumstances of the U.S. Arctic Glacier Parties and the interests of the various stakeholders involved in the CCAA Proceedings and the concurrent Chapter 15 Proceedings.
- 4.23 The Monitor notes that, in certain instances, the Liability Look-Back Period applicable to certain U.S. states is 3 years, which is less than the Data Period of 3 years and 208 days. In such cases, any sales made during the first year of the Data Period (2009) were reduced on a *pro rata* basis, such that only sales for the applicable Liability Look-Back of 3 years would remain.
- 4.24 In addition, the Monitor notes that, in certain instances, the Liability Look-Back Periods applicable to certain states extend beyond the duration of the Data Period. In such instances, the Monitor does not have actual sales information relating to the entire applicable Liability Look-Back Period. For the purpose of estimating the potential aggregate outstanding sales tax liability of the Identified U.S. AG Parties in these

instances, the Monitor (a) used the available sales information for the Data Period and calculated the average daily sales amounts during the Data Period for each of the Identified U.S. AG Parties in each of the Outstanding States, and (b) then multiplied each average daily sales amount by the number of days by which the applicable Liability Look-Back Period exceeded the Data Period. Based on a review of the Annual Reports for the ten year period from 2002 through 2011, the sales of the U.S. Arctic Glacier Parties in all but two of the years prior to the Data Period were lower than any of the years within the Data Period. Accordingly, the Monitor believes that this method of estimating sales prior to the Data Period is generous because sales generally increased during the Data Period.

Estimate of Aggregate Sales Tax Amount

- 4.25 Based on the Sales Schedules, the Liability Look-Back Periods and the tax, interest and penalty rates provided by Genetelli, the Monitor estimates the maximum potential aggregate outstanding sales tax liability of the Identified U.S. AG Parties in the Outstanding States is approximately \$775,000, including estimated penalties and estimated interest accrued to December 31, 2014 (the “Aggregate Sales Tax Amount”). However, the Monitor notes that the resulting estimate does not constitute an admission by the Identified U.S. Arctic Glacier Parties that such amount is owed or will be paid to the Taxing Authorities. Rather, the estimate provides for an upper limit of any potential sales tax liability of the Arctic Glacier Parties pursuant to the process proposed in this Nineteenth Report. A schedule that provides a breakdown of these estimated potential

sales tax liabilities by applicable Identified U.S. AG Party and Outstanding State is included in Confidential Appendix “G”.

- 4.26 The Aggregate Sales Tax Amount was calculated on the conservative basis that nexus existed for each of the Identified U.S. AG Parties that incurred sales for the entirety of each applicable State Liability Look-Back Period in each of the Outstanding States and that all such sales were fully taxable. Furthermore, maximum potential tax, interest and penalty rates were used in calculating the Aggregate Sales Tax Amount. Therefore, the Aggregate Sales Tax Amount reflects what is considered to be the maximum potential outstanding sales tax liability of the Identified U.S. AG Parties during the applicable Liability Look-Back Periods.

Proposed Process and Timing in Respect of the Sales Tax Issue and Plan Implementation

- 4.27 In order to fulfill the 10.3(d) Condition in a timely manner and in light of the information and analysis described in this Nineteenth Report and the unique circumstances of the U.S. Arctic Glacier Parties, the Monitor and the CPS propose to take the steps described below in respect of the Reviewable Sales of the applicable Identified U.S. AG Parties in each of the Outstanding States.

Establishment of the Administrative Sales Tax Reserve

- 4.28 The Monitor will earmark \$2 million of the \$10 million Administrative Costs Reserve (such earmarked portion being the “Administrative Sales Tax Reserve”) to provide a

reserve for the payment of any outstanding sales taxes, interest and penalties payable by any of the Identified U.S. AG Parties. The Plan provides that the Administrative Costs Reserve is to be established on the Plan Implementation Date and held by the Monitor, on behalf of the Arctic Glacier Parties, for the purpose of paying the Administrative Reserve Costs, which include, *inter alia*, amounts in respect of existing or future taxes that are or may become payable.

- 4.29 The proposed quantum of the Administrative Sales Tax Reserve represents a multiple of approximately 2.5 times the value of the Aggregate Sales Tax Amount.⁸ The Monitor and the CPS are satisfied that there is sufficient availability in the Administrative Costs Reserve for the Administrative Sales Tax Reserve and that the quantum of the Administrative Sales Tax Reserve is fair and reasonable in the circumstances.

Approval of State Sales Tax Liability Caps

- 4.30 The Monitor and the Applicants propose that the U.S. Bankruptcy Court approve of certain limits (the “**State Sales Tax Liability Caps**”) to the amount of sales tax and associated penalties and interest that can be claimed by Taxing Authorities in each of the Outstanding States, as provided in the form of U.S. Plan Implementation Order. The amount of the State Sales Tax Liability Cap that is applicable to each Outstanding State is included in Confidential Appendix “G”. These State Sales Tax Liability Caps reflect a

⁸ A multiple of 2.5 times the value of the Aggregate Sales Tax Amount equals \$1,937,165. Accordingly, the Monitor has earmarked \$2 million for the Administrative Sales Tax Reserve.

multiple of approximately 2.5 times the potential sales tax liability, inclusive of penalties and interest, of each Identified U.S. AG Party in each applicable Outstanding State, as calculated through the methodology described above. Accordingly, the aggregate amount of the State Sales Tax Liability Caps is equal to the Administrative Sales Tax Reserve.

Notice to Taxing Authorities

4.31 Concurrently with the service of this Nineteenth Report, the Monitor has served each Taxing Authority with a specialized notice (the “**Specialized Notice**”) in the form attached as Appendix “J”. The Specialized Notice that was served to each individual Taxing Authority specifies, among other things, the estimated potential sales tax liability, if any, of each applicable Identified U.S. AG Party in the applicable Outstanding State and the applicable State Sales Tax Liability Cap. Copies of the Specialized Notices are included in Confidential Appendix “G”.

4.32 The Monitor proposes that Taxing Authorities be provided with more than 21 days following the service of this Nineteenth Report and the Specialized Notices to review this Nineteenth Report and the applicable Specialized Notice and to raise any objections.

U.S. Plan Implementation Order

4.33 The Monitor has scheduled a hearing before the U.S. Bankruptcy Court on December 12, 2014 (the “**U.S. Sales Tax Hearing**”) to request that the U.S. Bankruptcy Court grant the proposed form of U.S. Plan Implementation Order. The proposed form of U.S. Plan Implementation Order provides, among other things, that:

- a) by following the process described herein, the Monitor and the CPS will be deemed to have satisfied the 10.3(d) Condition;
- b) the Administrative Sales Tax Reserve and the State Sales Tax Liability Caps, and the process undertaken by the Monitor to calculate them (including underlying assumptions), are fair and reasonable under the circumstances;
- c) any Taxing Authority which failed to file a notice of objection to the U.S. Plan Implementation Order prior to 4:00 p.m. (Eastern Time) on December 2, 2014 will be prohibited from objecting to the U.S. Plan Implementation Order and/or asserting a claim for sales taxes or associated penalties and interest beyond the amount of the applicable Sales Tax Liability Cap;
- d) each Taxing Authority will be subject to the release and injunction provisions of the Plan, the Sanction Order and the Recognition Order;
- e) in respect of the Sales Tax Issue, each Taxing Authority will be prohibited from receiving a distribution under the Plan in excess of the value of the applicable Sales Tax Liability Cap;
- f) the Monitor and the CPS, on behalf of the Arctic Glacier Parties, will have the authority to agree by stipulation and agreed order with a Taxing Authority, prior to a distribution to such Taxing Authority under the Plan, on an appropriate amount, if any, to be paid out of the Administrative Sale Tax Reserve to such Taxing Authority, or an alternative limit to the amount of sales taxes and associated interest and penalties that such Taxing Authority

can claim, that is lower than such Taxing Authority's State Sales Tax Liability Cap; and

- g) the U.S. Bankruptcy Court will retain jurisdiction to resolve any dispute in respect of the amount of any claim by a Taxing Authority and the U.S. Bankruptcy Court's jurisdiction over such dispute may be invoked by the Monitor upon notice to a Taxing Authority.

- 4.34 Pursuant to paragraph 4.33(f) above, if the U.S. Plan Implementation Order is granted, the Monitor will be contacting each of the applicable Taxing Authorities to negotiate and resolve any claims for outstanding sales tax liability (inclusive of penalties and interest).

Rationale for Approach

- 4.35 The Monitor and the CPS submit that any approach to fulfilling the 10.3(d) Condition must appropriately address the payment and/or satisfaction of the Identified U.S. AG Parties' potential outstanding sales tax liabilities and obligations while minimizing further delays to the Plan Implementation Date. The proposed approach accomplishes these goals.

Ensuring Payment of All Sales Tax Liabilities and Obligations

- 4.36 The Administrative Sales Tax Reserve will provide sufficient funds to pay sales tax liabilities and obligations due from the Identified U.S. AG Parties relating to the State Liability Look-Back Period. As described above, the Aggregate Sales Tax Amount was calculated conservatively on the basis that nexus existed for each of the Identified U.S.

AG Parties that incurred sales for the entirety of each applicable State Liability Look-Back Period and that all such sales were fully taxable in each of the Outstanding States. Furthermore, maximum potential tax, interest and penalty rates were used in calculating the Aggregate Sales Tax Amount, and the Administrative Sales Tax Reserve represents a multiple of approximately 2.5 times the Aggregate Sales Tax Amount.

Minimizing Delay

- 4.37 The proposed approach provides for the payment of outstanding sales tax liabilities to be made by way of the Administrative Costs Reserve, thereby limiting further delays to the Plan Implementation Date.
- 4.38 Assuming that the proposed form of U.S. Plan Implementation Order is granted on December 12, 2014, the Plan will be implemented following the expiration of any applicable appeal period and result in an anticipated Plan Implementation Date on or about January 8, 2015, provided, however, that the Monitor reserves the right to implement the Plan prior to the expiration of any applicable appeal period if, in the Monitor's sole and absolute discretion, and with the advice of counsel, it is appropriate under the circumstances, assuming there is no court-ordered stay pending appeal. This assumes that any objections made by Taxing Authorities are resolved consensually among the applicable parties prior to the U.S. Sales Tax Hearing, or by the U.S. Bankruptcy Court at the U.S. Sales Tax Hearing, in a manner that is acceptable to the

Monitor, the CPS and the Arctic Glacier Parties, acting reasonably, and the U.S. Plan Implementation Order is not appealed.

Available Alternatives

- 4.39 The Monitor is advised by Genetelli that undertaking the Voluntary Disclosure Process for each of the applicable Identified U.S. AG Parties in each of the Outstanding States would take significant time, require considerable expense and would cause further significant delays to the Plan Implementation Date. Furthermore, distributions to Unitholders would be reduced without any corresponding benefit to another party. Accordingly, the Monitor submits that the proposed approach is a better and more practical alternative.
- 4.40 Further, the approach proposed herein is based on, and akin to, the Voluntary Disclosure Process and hence, is not considered to prejudice the Outstanding States. The approach also recognizes the unique circumstances of the U.S. Arctic Glacier Parties and the interests of the various stakeholders involved in the CCAA Proceedings and the concurrent Chapter 15 Proceedings. Accordingly, the Monitor and the CPS are of the view that the proposed process described in this Nineteenth Report is balanced and fair, and should ensure payment of all potential sales tax liabilities of the applicable Identified U.S. AG Parties in each of the Outstanding States in the same manner as would otherwise be available to the Identified U.S. AG Parties under a Voluntary Disclosure Process, and in a manner that does not further delay the implementation of the Plan and that utilizes

the Arctic Glacier Parties' resources in the manner that is in the best interests of the Applicants and their stakeholders.

- 4.41 In addition, Genetelli has advised the Monitor that Taxing Authorities do not typically require companies to pay penalties under the Voluntary Disclosure Process. As the Aggregate Sales Tax Amount includes potential penalties and the Sales Tax Reserve is a multiple of the Aggregate Sales Tax Amount, the Administrative Sales Tax Reserve reflects an amount that the Monitor and the CPS believe is significantly higher than the potential liability that may have been owed in the event that the Identified U.S. AG Parties utilized the Voluntary Disclosure Process.

Reserves and Distribution Cash Pools

- 4.42 As described in the Fifteenth Report, the reserves and distribution cash pools contemplated by the Plan are comprised of the Available Funds and will be used to fund the Administrative Costs Reserve, the Insurance Deductible Reserve, the Unresolved Claims Reserve, the Affected Creditors' Distribution Cash Pool, and the Unitholders' Distribution Cash Pool.
- 4.43 The Seventeenth Report indicated that, following the settlement of the Johnson Claim, the CAD\$12.188 million amount remaining that was previously reported as being earmarked as part of the Unresolved Claims Reserve in respect of the Johnson Claim (as defined in the Seventeenth Report) may be required to satisfy the 10.3(d) Condition. This will no longer be required provided that the proposed form of U.S. Plan Implementation

Order is granted and no appeal is raised during the applicable appeal period in connection therewith.

Reservation of Rights

- 4.44 As more particularly described above, the Canadian Court approved a Claims Process pursuant to the Claims Procedure Order and the Claims Officer Order. These Orders were both recognized by the US Bankruptcy Court. The Monitor did not receive any Proofs of Claim or DO&T Proofs of Claim from Taxing Authorities in the Outstanding States in respect of sales taxes prior to the Claims Bar Date, nor have any such Proofs of Claim or DO&T Proofs of Claim been received from such Taxing Authorities as of the date of this Nineteenth Monitor's Report. Pursuant to the Claims Procedure Order, any Person (a "Non-filer") that did not file a Proof of Claim or DO&T Proof of Claim such that the Proof of Claim or DO&T Proof of Claim was received by the Monitor on or before the Claims Bar Date is forever barred from making or enforcing such Claim or DO&T Claim against the Arctic Glacier Parties or against any Directors, Officers or Trustees, as applicable, and such Claims or DO&T Claims shall be forever extinguished. Additionally, the Claims Process Order provides that Non-filers shall be forever barred from making or enforcing a Claim or DO&T Claim as against any other Person who could claim contribution or indemnity from the Arctic Glacier Parties or any Directors, Officer or Trustees, as applicable.

4.45 The Monitor notes that not all of the Taxing Authorities were sent a claims package as part of the Claims Process. Nonetheless, in such cases, the Taxing Authorities would have been advised of the Claims Bar Date pursuant to the various court-approved newspaper publications under the Claims Procedure Order. In addition, the Plan provides for a release of Claims, including Claims that have been barred or extinguished pursuant to the Claims Procedure Order or the Claims Officer Order, and all Taxing Authorities known to the Monitor at the time (including all state Taxing Authorities) were served with materials in connection with the Plan, the Sanction Order and the U.S. Order recognizing and giving full effect in the United States to the Sanction Order. Accordingly, the Monitor and the Applicants are reserving all rights provided for in the Claims Procedure Order and the Claims Process Order with respect to the Sales Tax Issue that cannot be resolved consensually.

5.0 UNITHOLDER DISTRIBUTION RECORD DATE

5.1 The Monitor will determine a Unitholder Distribution Record Date at least 21 days prior to the Plan Implementation Date, in accordance with the Plan. Pursuant to the Plan, subject to the proposed form of U.S. Plan Implementation Order being granted and the expiration of the applicable appeal period in connection therewith, the Transfer Agent shall distribute a Unitholder Distribution, on behalf and for the account of AGIF, soon after the Plan Implementation Date by way of cheque sent by prepaid ordinary mail or by way of wire transfer to each Registered Unitholder, as of the applicable Unitholder

Distribution Record Date, that the Transfer Agent is aware of and has contact information in respect of, based on each Registered Unitholder's Pro Rata Share, (a) for such Registered Unitholder, in respect of Trust Units held by such Registered Unitholder solely for and on behalf of itself, as applicable; or (b) for distribution by such Registered Unitholder to (i) Beneficial Unitholders, as applicable, or (ii) Nominees or the agents of such Nominees for subsequent distribution to the applicable Beneficial Unitholders.

5.2 The Monitor will cause notices of the Unitholder Distribution Record Date to be published in the *Globe and Mail* (National Edition), the *Wall Street Journal* (National Edition) and the *Winnipeg Free Press*. Assuming the proposed form of U.S. Plan Implementation Order is granted, AGIF will issue a press release confirming the distribution amount and payment date after such information is determined. The Monitor will cause such distribution, on behalf of AGIF, in accordance with the Plan.

5.3 Assuming that the U.S. Plan Implementation Order is granted, the Administrative Sales Tax Reserve will represent more than the Identified U.S. AG Parties' maximum potential outstanding sales tax liability. However, it is anticipated that the Identified U.S. AG Parties' actual sales tax liability may only be a small portion of the Administrative Sales Tax Reserve. Therefore, there is a potential that a significant portion of the Administrative Sales Tax Reserve will not be required to satisfy the sales tax liability. Pursuant to the Plan, any final remaining balance held in the Administrative Costs Reserve, which includes any remaining amount in the Administrative Sales Tax Reserve, will ultimately be distributed to the Transfer Agent and then paid to the Unitholders on a

pro rata basis, unless the cost of making any such payment is prohibitive relative to the final remaining balance.

6.0 SEALING ORDER

- 6.1 The Monitor is seeking a sealing order for the Confidential Appendix as it contains commercially sensitive information concerning the Identified U.S. AG Parties' historical sales in the Outstanding States. Disclosure of this commercially sensitive information could negatively affect New Arctic Glacier as such information can be used by its competitors. As such, the Monitor has requested an order sealing the Confidential Appendix.

7.0 THE MONITOR'S COMMENTS AND RECOMMENDATIONS

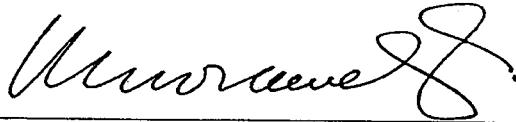
- 7.1 Excluding the Sales Tax Issue, the Monitor and the CPS are not aware of any concerns regarding the payment of taxes or the non-filing of tax returns that have not, or will not, be dealt with pursuant to the Plan, the Orders granted in the CCAA Proceedings and the concurrent Chapter 15 Proceedings, or otherwise. As such, the Monitor and the CPS have concluded that achieving a satisfactory resolution to the Sales Tax Issue, as proposed herein, is sufficient to satisfy the 10.3(d) Condition in the Plan.
- 7.2 Based on the information provided to the Monitor and the CPS by the Arctic Glacier Parties and New Arctic Glacier, as well as the information and advice received from

Genetelli, the Monitor and the CPS have concluded that the process to address the Sales Tax Issue described in this Nineteenth Report is fair and reasonable in the circumstances.

- 7.3 Accordingly, for the reasons set out in this Nineteenth Report, the Monitor, in its capacity as the foreign representative of the Arctic Glacier Parties, hereby respectfully recommends that the U.S. Bankruptcy Court grant the relief being requested by it in its motion regarding the U.S. Plan Implementation Order.

All of which is respectfully submitted to the U.S. Bankruptcy Court this 7th day of November, 2014.

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

A handwritten signature in dark ink, appearing to read "Morawetz", is written over a horizontal line.

Per: Richard A. Morawetz, Senior Vice President

TAB E

SUPREME COURT : STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

FILED AND ENTERED:

9-23-14

-----X
GEYSIR SALES CORPORATION, INC.,

Plaintiff,

-against-

ARCTIC GLACIER, INC., ARCTIC GLACIER NEW
YORK, INC.,

Defendants.
-----X

To commence the statutory time period for
appeals as of right (CPLR 5513[a]), you are
advised to serve a copy of this order, with
notice of entry, upon all parties.

DECISION & ORDER

Index No: 14087-2009

Motion Return Date:
April 28, 2014
Motion Seq. #12

The following papers numbered 1 through 32 were read on the motion by defendants for
an order granting summary judgment dismissing the complaint.

Notice of Motion, Affirmation (Exhibits A-P).....	1-18
Affidavit in Support (Exhibits A-E).....	19-24
Memorandum of Law.....	25
Affirmation in Opposition (Exhibits A-D).....	26-30
Memorandum of Law.....	31
Reply Memorandum of Law.....	32

Upon reading the foregoing papers it is

ORDERED the motion is granted and the complaint is dismissed.

Plaintiff, a wholesale distributor of hardwood flooring, and defendant, a commercial ice-maker, leased adjoining commercial space in Mamaroneck, New York. At approximately 7:30 p.m. on April 16, 2009, one of defendant's commercial ice makers developed a leak and discharged ammonia gas into the premises occupied by plaintiff and defendant. Plaintiff sued alleging causes of action for negligence, res ipsa loquitur, nuisance and trespass.

Following completion of discovery defendant moves for summary judgment dismissing the complaint.

Defendant demonstrated that an independent contractor inspected the ice machine one month before the leak and found no problems. In addition, defendant established that it inspected the ice machine on a daily basis, including the day of the incident. Defendant also established that it properly implemented a risk management plan approved by the United States Environmental Protection Agency. Thus, defendant established its prima facie entitlement to

judgment as a matter of law dismissing the negligence cause of action by demonstrating that it neither caused the leak nor had actual or constructive notice of a defect that would cause a leak (*IDE Pontiac, Inc., v D.V.G. Elec. Contr.*, 298 AD2d 912 [4th Dept 2002]). In opposition, plaintiff failed to raise a triable issue of fact. The affirmation of its expert failed to provide any factual basis for his conclusion that the leak “was caused because ice was allowed to freeze solid [presumably by defendant] in the pipe beyond the volume that is permitted for safe operation of the machine.” The expert’s affirmation is conclusory and without probative value since it is based on speculation, not facts he cites from the record (*Diaz v New York Downtown Hosp.*, 99 NY2d 542 [2002], *Johnson v Diaz*, 120 AD3d 765 [2d Dept 2014]).

Moreover, contrary to plaintiff’s contention the doctrine of *res ipsa loquitur* is inapplicable in this case since there is no basis for finding that the origin of the gas leak was due to negligence (*One Beacon Ins. Co. v CMB Contracting Corp.*, 84 AD3d 902 [2d Dept 2011]; *North Star Constr. Corp. v Burton F. Clark, Inc.*, 214 AD2d 550 [2d Dept 1995]; *Bd of Educ. of Ellenville Cent. Sch. Dist.*, 79 AD2d 1049 [2d Dept 1981]; *Schulteis v Pristouris*, 45 AD2d 864 [2d Dept 1974]).

Finally, defendant established its entitlement to summary judgment as a matter of law dismissing the trespass and nuisance causes of action by demonstrating that it did not act intentionally. In opposition, plaintiff failed to raise a triable issue of fact whether defendant acted for the purpose of interfering with plaintiff’s use or enjoyment of its property, or knew that such interference was substantially certain to result from its conduct (*see*, PJI 3:16 [private nuisance] and PJI 3:8 [trespass]).

ENTER,

Dated: White Plains, New York
September 22, 2014


HON. JOAN B. LEFKOWITZ, J.S.C.

To: DAY PITNEY LLP
Attorneys for Plaintiff
7 Times Square
New York, NY 10036

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