

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 15
	:	
ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	
	:	<b>Hearing Date: December 13, 2016, at 2:00 p.m. (ET)</b>
	:	<b>Obj. Deadline: December 2, 2016, at 4:00 p.m. (ET)</b>

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**NOTICE OF MOTION FOR AN ORDER AUTHORIZING  
THE RELEASE OF THE AGGREGATE SALES TAX RESERVE IN  
RESPECT OF THE POTENTIAL SALES TAX LIABILITY**

**PLEASE TAKE NOTICE** that Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the “Monitor”) for the above-captioned debtors (collectively, the “Debtors”) in a proceeding under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Court of Queen’s Bench Winnipeg Centre, has filed the attached *Motion for an Order Authorizing the Release of the Aggregate Sales Tax Reserve in Respect of the Potential Sales Tax Liability* (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “Hearing”) to consider the Motion will be held on December 13, 2016, at 2:00 p.m. (ET) before the Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware (the “Court”), 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that any objections to the Motion must be filed on or before December 2, 2016, at 4:00 p.m. (ET) (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor,

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<sup>1</sup> The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICESurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors’ executive headquarters was located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection so as to be actually received by the following parties on or before the Objection Deadline: (i) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Marc Abrams, Ji Hun Kim, and Sudeep Paul); (ii) Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6100, Toronto, Ontario, Canada M5X 1B8 (Attn: Michael De Lellis and Mary Paterson); (iii) Young Conway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady and Matthew P. Lunn); and (iv) Kevin McElcheran Commercial Dispute Resolution, 120 Adelaide Street W., Suite 420, P.O. Box 43, Toronto, Ontario, Canada M5H 1T1 (Attn: Kevin P. McElcheran).

**PLEASE TAKE FURTHER NOTICE** that you need not appear at the Hearing if you do not object to the relief request in the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing or by notice filed on this Court's docket.

**PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

**PLEASE TAKE FURTHER NOTICE** that additional copies of the Motion are available: (a) by accessing the Court's internet website at <https://ecf.deb.uscourts.gov> (a login and a password to the Court's Public Access to Court Electronic Records are required to access this information and can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>); (b) from the Monitor's website at <http://www.amcanadadocs.com/arcticglacier> or <http://www.kccllc.net/ArcticGlacier> (without cost); or (c) upon written request to the Monitor's counsel (by email or facsimile) addressed to: Young Conway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn.: Melissa Romano, e-mail, [mromano@ycst.com](mailto:mromano@ycst.com) or facsimile, 302-576-3450) (without cost).

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Dated: Wilmington, Delaware  
November 18, 2016

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Ian J. Bambrick*

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Foreign Representative*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 15
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ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	
	:	<b>Hearing Date: December 13, 2016, at 2:00 p.m. (ET)</b>
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**MOTION FOR AN ORDER AUTHORIZING THE RELEASE OF THE SALES TAX  
RESERVE IN RESPECT OF THE POTENTIAL SALES TAX LIABILITY**

Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the “Monitor”) of the above-captioned debtors (collectively, the “Debtors”) in the proceeding (the “Canadian Proceeding”) commenced under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), and pending before the Court of Queen’s Bench Winnipeg Centre (the “Canadian Court”), files this motion (the “Motion”) for the entry of an order, substantially in the form annexed hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105(a), 1507, 1521, 1525, and 1527 of title 11 of the United States Code (the “Bankruptcy Code”) authorizing the release of the Sales

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<sup>1</sup> The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors’ executive headquarters was located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

Tax Reserve (defined herein) in respect of the Potential Sales Tax Liability (defined herein). In support of the Motion, the Monitor respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The Monitor's responsibilities include determining (with the CPS<sup>2</sup>), based on inquiries and consultation with the Arctic Glacier Parties or otherwise, that all of the conditions precedent to the *Consolidated Plan of Compromise and Arrangement of the Debtors*, dated as of May 21, 2014, as amended on August 26, 2014 (as sanctioned by the Canadian Court, and as may be further amended, modified, and supplemented, and together with all appendices and exhibits thereto, the "CCAA Plan") have been satisfied or waived. In connection with such responsibilities, the Monitor became aware that certain of the Debtors may not have filed required sales tax returns or collected and remitted sales taxes in certain U.S. states and localities where the Debtors conducted business (the "Outstanding States"). On November 7, 2014, the Monitor filed its *Motion for an Order in Aid of Plan Implementation: (A) Approving Individual and Aggregate Reserves in Respect of Potential Sales Tax Liability; (B) Approving Procedures and Deadlines in Connection Therewith; (C) Approving the Form and Manner of Notice Thereof; (D) Finding the Monitor and the CPS to have Satisfied the Tax-Related Condition Precedent to Plan Implementation and (E) Granting Related Relief* (the "Sales Tax Motion") [Docket No. 371], which sought this Court's approval to, among other things, implement a process to (a) determine the appropriate amount, if any, of potential outstanding sales tax liabilities to the Outstanding States (the "Potential Sales Tax Liability"), (b) provide adequate notice to the Outstanding States of such liabilities, and (c) establish a reserve fund to be the sole source of recourse on account of any outstanding sales tax liabilities.

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<sup>2</sup> All capitalized terms not defined herein shall have the meanings ascribed to them in the Sales Tax Motion or the CCAA Plan, as applicable.

2. On December 12, 2014, this Court entered its Order approving the Sales Tax Motion (the “Sales Tax Order”) [Docket No. 398], which, among other things, (a) authorized the Monitor to earmark a portion of the Administrative Costs Reserve in the amount of approximately \$2,000,828 to act as a reserve for the payment of any Potential Sales Tax Liability, including penalties and interest, to the Outstanding States (the “Sales Tax Reserve”), (b) approved procedures and deadlines in connection therewith, (c) approved the form and manner of notice thereof, (d) found the Monitor and the CPS to have satisfied the Tax Condition, and (e) granted related relief.

3. The Monitor has fulfilled all of its obligations as required by the Sales Tax Order by, among other things, contacting 61 Taxing Authorities (which comprise the relevant taxing authorities of all of the Outstanding States), explaining the Sales Tax Liability Process in Sales Tax Reserve.

4. Now, with the Sales Tax Liability Process having been completed and all obligations fulfilled, the Monitor requests that this Court authorize the release of the Sales Tax Reserve.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Venue is proper in this Court and in this District pursuant to 28 U.S.C. § 1410(1). The statutory predicates for the relief requested herein are sections 105(a), 1501, 1507, 1521, 1525, and 1527 of the Bankruptcy Code.

## GENERAL BACKGROUND

6. On February 22, 2012, the Debtors<sup>3</sup> commenced the Canadian Proceeding, and the Canadian Court entered an initial order (including any extensions, amendments, or modifications thereto, the “Initial Order”), pursuant to the CCAA, providing various forms of relief thereunder, including, but not limited to, authorizing and directing the Debtors to commence, and the Monitor, the Financial Advisor (as defined in the Sale and Investor Solicitation Process (the “SISP”)) and the CPS to perform their obligations under, a process offering potential investors an opportunity to purchase or invest in the Debtors’ business and operations in accordance with the SISP.

7. On February 22, 2012 (the “Petition Date”), the Monitor commenced these proceedings (these “Chapter 15 Cases”) by filing verified petitions on behalf of the Debtors, pursuant to sections 1504 and 1515, seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

8. On February 23, 2012, this Court entered the *Order Granting Provisional Relief* [Docket No. 28] (the “Provisional Relief Order”), providing for, among other things, a stay of all proceedings against or concerning property of the Debtors located within the territorial jurisdiction of the United States.

9. On March 16, 2012, this Court entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition

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<sup>3</sup> As described more fully in the *Declaration of Philip J. Reynolds in Support of Verified Petition of Alvarez & Marsal Canada Inc., as Foreign Representative of Arctic Glacier Inc. and Certain of its Affiliates, for: (I) Recognition of Foreign Main Proceeding and (II) Certain Related Relief* [Docket No. 2] (the “Reynolds Declaration”), Glacier Valley Ice Company, L.P (“Glacier L.P.”), an affiliate of the Debtors, is not an applicant in the Canadian Proceeding because partnerships are ineligible to be applicants under the CCAA. However, pursuant to this Court’s Provisional Relief Order and Recognition Order (as each term is defined below), the stay provided for in section 362 applies to Glacier L.P. Additionally the assets of Glacier L.P. were sold as provided in the CCAA Vesting Order and the U.S. Sale Order (both of which are defined herein). For convenience sake, all references to “Debtors” herein and in the Proposed Order shall include Glacier L.P., even though such entity is not a Debtor in the Chapter 15 Cases (as defined herein).

Order”). Pursuant to the Recognition Order, this Court (a) granted recognition of the Canadian Proceeding as a foreign main proceeding under section 1517, (b) authorized the Debtors to obtain postpetition secured financing, and (c) enforced the Initial Order on a permanent basis in the United States.

10. On June 21, 2012, the Canadian Court entered the *Sale Approval and Vesting Order* (as amended and restated, the “CCAA Vesting Order”), pursuant to which the Canadian Court authorized and approved the sale of the Debtors’ right, title, and interest in and to the Purchased Assets (as defined in the CCAA Vesting Order) free and clear of all Interests (as defined in the CCAA Vesting Order), except as provided in the Purchase Agreement (the “Sale”).

11. On July 17, 2012, this Court entered an order [Docket No. 126] (the “U.S. Sale Order”), which among other things: (a) recognized and enforced the CCAA Vesting Order; (b) authorized and approved the Sale pursuant to section 363(f); (c) authorized and approved, to the extent provided for in the CCAA Vesting Order, the assignment of the Assigned Contracts (as defined in the U.S. Sale Order); and (d) granted certain related relief.

12. As contemplated by the CCAA Vesting Order and described in the *Notice of Filing of Monitor’s Certificate* [Docket No. 139] (the “Certificate Filing Notice”), on July 27, 2012, the Monitor delivered the *Monitor’s Certificate*, which, among other things, notified the Canadian Court and other parties in interest that the Sale had closed. A copy of the *Monitor’s Certificate* was filed with the Certificate Filing Notice on August 2, 2012 [Docket No. 139].

13. On July 12, 2012, the Canadian Court entered the *Transition Order* (the “Transition Order”), authorizing, but not requiring, the Monitor to prepare various tax returns on behalf of the Debtors and (a) ordering that the Monitor shall incur no liability with respect to

such returns, (b) ordering that “Monitor shall not be deemed to be in possession and/or control” of any property of the Debtors, and (c) declaring that “nothing in [the Transition Order] shall constitute or be deemed to constitute the Monitor as a trustee, receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of any of the [Debtors] within the meaning of any relevant legislation.” (Transition Order ¶¶ 4, 7-8.)

14. On September 5, 2012, the Canadian Court entered the *Claims Procedure Order* (the “Claims Procedure Order”) establishing procedures for the submission and determination of Claims against the Debtors and their directors, officers, and trustees (the “Claims Process”). In accordance with paragraphs 14 and 15 of the Claims Procedure Order, the Monitor mailed the Notice to Claimants (as defined in the Claims Procedure Order) to all creditors of the Debtors known to the Monitor at that time and caused the Notice to Claimants to be published in (a) The Globe and Mail newspaper (National Edition), (b) the Wall Street Journal (National Edition), and (c) the Winnipeg Free Press.

15. On September 14, 2012, this Court entered the *Order Recognizing and Enforcing Claims Procedure Order of the Canadian Court* [Docket No. 166] (the “Claims Procedure Recognition Order”) recognizing and giving full force and effect in the United States to the Claims Procedure Order and the Claims Process contemplated thereby.

16. On May 21, 2014, the Canadian Court entered the *Meeting Order* (the “Meeting Order”), which, among other things, authorized the process for (a) the determination of a resolution to approve the CCAA Plan by the Affected Creditors, and (b) the solicitation of Unitholder votes to accept or reject the resolution to, among other things, approve the CCAA Plan.

17. On June 6, 2014, this Court entered the *Order Recognizing the Meeting Order of the Canadian Court* [Docket No. 323] (the “Meeting Recognition Order”) recognizing and giving full force and effect in the United States to the Meeting Order.

18. On September 5, 2014, the Canadian Court entered an order (the “Sanction Order”) that, among other things, sanctioned and approved the CCAA Plan. On September 16, 2014, after notice and a hearing, this Court approved and entered an order giving full force and effect to the Sanction Order in the United States (the “Sanction Recognition Order”) [Docket No. 354]. The Sanction Order and the Sanction Recognition Order each provided for releases on the Plan Implementation Date for certain parties, including without limitation, the Debtors, the Monitor, the CPS, and the Trustees from any and all claims for unpaid taxes and enjoined all persons, including all taxing authorities in states and localities in which the Debtors had sales, from taking any action to seek to enforce or collect any such unpaid taxes. The Monitor provided notice of the Sanction Order and the Sanction Recognition Order to all Taxing Authorities known to it at that time. No such Taxing Authority objected to the entry of the Sanction Order or the Sanction Recognition Order.

19. On December 12, 2014, the Court entered the Sales Tax Order that, among other things, authorized the Monitor to set up the Sales Tax Reserve to pay the Potential Sales Tax Liabilities to the Outstanding States. A Taxing Authority’s acceptance of such payment in satisfaction of the Potential Sales Tax Liability would forever bar, estop, and enjoin the Taxing Authority from asserting a sales tax claim against the Debtors (and any other Releasees (as such term is defined in the Sanction Recognition Order)).

20. On January 22, 2015 (the “Plan Implementation Date”), the CCAA Plan was successfully implemented after the Monitor certified that the conditions precedent set out in the CCAA Plan had been satisfied or waived.

### **SPECIFIC BACKGROUND**

21. On November 7, 2014 (prior to the December 12, 2014 hearing held on the Sales Tax Motion by this Court), the Monitor sent specialized notices to each of the Taxing Authorities indicating that the Monitor had filed the Sales Tax Motion. In each specialized notice, the Monitor listed the amount of the Potential Sales Tax Liability owed by certain of the Debtors to each Taxing Authority in an Outstanding State, along with the individual reserve allocated to such Taxing Authority (the “Individual State Reserve Cap”). Each Individual State Reserve Cap represented a multiple of approximately 2.5 times the value of the Potential Sales Tax Liability to each Outstanding State during the relevant look-back time period. The Individual State Reserve Caps were calculated using conservative estimates favorable to the Taxing Authorities in the Outstanding States.

22. In accordance with the Sales Tax Order and as further described in the *Twenty-Third Report of the Monitor*, dated November 9, 2015 (the “Twenty-Third Report”),<sup>4</sup> the Monitor contacted the Taxing Authorities to resolve any Potential Sales Tax Liability owed by the Debtors. The Monitor provided each Taxing Authority with a calculation (the “Tax Calculation”) of the total Potential Sales Tax Liability, including interest and penalties, of the Debtors, if any, owed to the applicable Taxing Authority. See *Twenty-Third Report*, §5.2.

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<sup>4</sup> A copy of the Twenty-Third Report, sans the schedules thereto, is attached hereto as Exhibit B. The schedules to the Twenty-Third Report are available on the website maintained by the Monitor at <https://www.alvarezandmarsal.com/arctic-glacier-income-fund-arctic-glacier-inc-and-subsiaries> (the “Monitor’s Website”).

23. On March 13, 2015, the Monitor sent individual letters to the Taxing Authorities, which provided, among other things, the amount of the Potential Sales Tax Liability the Monitor had calculated to be due and owing to the respective Taxing Authorities as well as a detailed explanation of the Sales Tax Liability Process. Each Taxing Authority was asked to either accept the Tax Calculation or provide a letter of objection describing any differing amount alleged to be owed to the Taxing Authority by the identified Debtors, along with a description of the basis for its calculation and any supporting materials by April 13, 2015.

24. In total, the Monitor reached out to 61 Taxing Authorities with combined Tax Calculations totaling approximately \$774,867. See Twenty-Third Report, §5.3. Of the 61 Taxing Authorities, 34 were deemed by the Monitor to be owed \$0. See id. None of the 34 Taxing Authorities with a \$0 Tax Calculation objected to the Monitor's determination that no sales taxes were owed. By October 30, 2015, of the remaining 27 Taxing Authorities with positive Tax Calculations, 16 Taxing Authorities had either accepted their respective Tax Calculation as the balance owed to them or settled at amounts greater than their respective Tax Calculation but less than or equal to their respective Individual State Reserve Cap. These 16 Taxing Authorities were paid, in aggregate, \$826,479. Id. at § 5.4. Additionally, two Taxing Authorities with Tax Calculations totaling \$15,937 informed the Monitor that they were not owed any sales tax by the Debtors and declined any payment. Id. at §5.5.

25. In regards to the remaining nine Taxing Authorities (the "Remaining Taxing Authorities") with positive Tax Calculations that had not responded to the Monitor's correspondence, the Monitor again contacted these Taxing Authorities, on October 30, 2015, by subsequent letter (the "Follow Up Letters"). In each of the Follow Up Letters, the Monitor also included a check in the amount of the respective Tax Calculation for each Remaining Taxing

Authority. The Follow Up Letters clearly detailed that, by cashing the enclosed check, the respective Taxing Authority would be accepting the payment in full and final satisfaction and releasing the Debtors of any and all debts associated with the Potential Sales Tax Liability. Id. at §5.6.

26. As detailed in the *Twenty-Fourth Report of the Monitor*, dated August 30, 2016, (the “Twenty-Fourth Report”),<sup>5</sup> five of the Remaining Taxing Authorities cashed the checks issued to them, totaling \$8,352. See *Twenty-Fourth Report*, §5.4. Three of the Remaining Taxing Authorities returned the checks with letters indicating that they had no record of any of the Debtors owing any sales taxes. Id. After receiving these letters, the Monitor, out of an abundance of caution, had follow-up discussions with each of these three Remaining Authorities where the Taxing Authorities reiterated that they did not have any record of any Potential Sales Tax Liability owed by the relevant Debtors and thus would not be accepting any payment in connection therewith. Id. After multiple communications with the Monitor, the one Remaining Taxing Authority indicated that its internal records also did not reflect any sales taxes due and owing by the Debtors. Id. As of the date hereof, all of the Taxing Authorities have been contacted and any Potential Sales Tax Liability issues involving the Debtors have been completely and fully resolved. Id. at §5.5.

### **RELIEF REQUESTED**

27. By this Motion, the Monitor requests the entry of the Proposed Order authorizing the release of the Sales Tax Reserve. As the Monitor has fulfilled all of its obligations in connection with the Sales Tax Liability Process and paid all Potential Sales Tax Liability to the relevant Taxing Authorities, the funds, which were originally earmarked from the

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<sup>5</sup> A copy of the *Twenty-Fourth Report*, sans the appendices thereto, is attached hereto as Exhibit C. The appendices to the *Twenty-Fourth Report* are available on the Monitor’s Website.

Administrative Costs Reserve, should be released so that they can be generally available under the Administrative Costs Reserve that is being held by the Monitor, on behalf of the Arctic Glacier Parties, to be used in accordance with the CCAA Plan (which was both approved by the Canadian Court and recognized and enforced by this Court).

### **BASIS FOR RELIEF**

28. Section 105(a) provides a bankruptcy court with broad powers in its administration of a case under the Bankruptcy Code: “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002).

29. Upon recognition of a foreign proceeding, section 1521(a) provides that, at the request of a foreign representative, the court may grant “any appropriate relief,” subject to certain exceptions not applicable here, provided that the court determines that doing so is necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors. See 11 U.S.C. § 1521(a).

30. Entry of the Proposed Order is appropriate under sections 105(a) and 1521 because the Monitor has fully resolved the Sales Tax Liability Issue and now the Sales Tax Reserve should be released so that such funds can be generally available under the Administrative Costs Reserve that is being held by the Monitor, on behalf of the Arctic Glacier Parties, to be used in accordance with the CCAA Plan. Absent this Court’s entry of the Proposed Order, the funds in the Sales Tax Reserve will not be released and cannot be used to pay other

Administrative Reserve Costs in accordance with the CCAA Plan, or be transferred to the Unitholders' Distribution Cash Pool in accordance with the CCAA Plan.

31. In addition, pursuant to section 1507, following recognition of a foreign proceeding and at the request of a foreign representative, the Court "may provide additional assistance to a foreign representative under this title or under other laws of the United States."

11 U.S.C. § 1507(a). Bankruptcy Code section 1507(b) further adds the following:

In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure. . .

- (1) just treatment of all holders of claims against or interests in the debtors' property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (3) prevention of preferential or fraudulent dispositions of property of the debtor;
- (4) distribution of proceeds of the debtors' property substantially in accordance with the order prescribed by this title; and
- (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns

11 U.S.C. § 1507(b).

32. The Monitor submits that this Court's approval of the Proposed Order is appropriate "additional assistance" that may be granted by this Court under section 1507. First, as described herein, by releasing the Sales Tax Reserve, the Court would ensure that such funds could be generally available under the Administrative Costs Reserve that is being held by the Monitor, on behalf of the Arctic Glacier Parties, to be used in accordance with the CCAA Plan. Second, the release of the Sales Tax Reserve will ensure that the proceeds of the Debtors'

property will continue to be distributed under the CCAA Plan in a manner that is substantially similar to the order proscribed by other chapters of the Bankruptcy Code.

33. Similarly, courts have held that chapter 15 contemplates that “additional assistance granted pursuant to section 1507 should . . . be consistent with the principle of comity” in deciding whether to grant a foreign representative additional post-recognition relief. In re Elpida Memory, Inc., 2012 WL6090194, at \*4 (Bankr. D. Del. Nov. 16, 2012); see also In re Metcalfe & Mansfeld Alternative Invs., 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010). There can be no doubt that entry of the Proposed Order is consistent with, and will promote, the principle of comity by ensuring that the payment of administrative claims and costs as well as distributions to Unitholders contemplated by the CCAA Plan, which has been sanctioned by the Canadian Court and recognized by this Court, will be made in a manner consistent with its terms, without unnecessary delay and costs, and in fairness to all creditors.

34. In addition to principles of comity, another key consideration is whether the requested relief supports coordination and cooperation among the courts in the administration of insolvency proceedings. In particular, section 1525(a) of the Bankruptcy Code provides that, “consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative,” and section 1527(3) of the Bankruptcy Code explicitly provides that one such form of cooperation may include “coordination of the administration and supervision of the debtor’s assets and affairs.” 11 U.S.C. §§ 1525(a); 1527(3).

35. The release of the Sales Tax Reserve provides comfort that the Debtors’ assets will not be unnecessarily tied up to the detriment of other stakeholders. The release of the Sales Tax Reserve will ensure that the Debtors can make necessary distributions and transfers from the Administrative Costs Reserve in accordance with the CCAA Plan. Furthermore, the

release of the funds will bring to conclusion the Sales Tax Liability Process that began in late 2014. Entry of the Proposed Order will allow the Debtors to take one of its final steps in emerging from the Canadian Proceeding in the near future, for the benefit of all stakeholders.

36. The Monitor submits further that approval of the Proposed Order is not manifestly contrary to the public policy of the United States and, therefore, section 1506 of the Bankruptcy Code does not present any bar to the entry of such order and the CCAA Plan. The manner in which the Debtors fulfilled their Potential Sales Tax Liability is consistent with restructuring methods contemplated by the Bankruptcy Code and United States insolvency principles. As such, the requested relief is consistent with the public policy of the United States.

37. Based on the foregoing, the Monitor respectfully requests that this Court recognize and give effect in the United States to the Proposed Order pursuant to sections 1501, 1507, 1521, 1525, and 1527 of the Bankruptcy Code, and under well-established principles of international comity and cooperation.

#### **NOTICE**

38. Notice of the Motion will be provided to all persons to whom notice is required pursuant to this Court's *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Docket No. 30].

**CONCLUSION**

WHEREFORE, the Monitor respectfully requests that this Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Wilmington, Delaware  
November 18, 2016

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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**EXHIBIT A**

**Proposed Order**



105(a), 1507, 1521, 1525, and 1527 of title 11 of the United States Code (the “Bankruptcy Code”): authorizing the release of the Sales Tax Reserve in respect of the Potential Sales Tax Liability; and due and sufficient notice of the Motion having been provided in the manner set forth in the Motion; and it appearing that no other or further notice is necessary or appropriate; and the Court having held a hearing to consider the Monitor’s request for the relief set forth in the Motion; and no objections to the Motion having been filed or all such objections having been resolved or overruled; and the Court having found and determined that the relief sought in the Motion is consistent with the purposes of chapter 15 of the Bankruptcy Code; and the Court having reviewed and considered the Twenty-Third and Twenty-Fourth Report of the Monitor; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and other parties in interest in these Chapter 15 Cases; and after due deliberation and sufficient cause appearing therefor,

**THE COURT FINDS AND CONCLUDES THAT:**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1401(1).

B. On December 12, 2014, this Court entered the Sales Tax Order, which authorized the Monitor to set aside the Sales Tax Reserve in contemplation of settling any Potential Sales Tax Liability accrued and owing to any Taxing Authority where the Debtors conducted business and failed to pay sales tax.

C. In accordance with the Sales Tax Order, the Monitor reached out and mailed letters to the Taxing Authorities on or about March 13, 2015, requesting the Taxing Authorities to either accept the Monitor’s Tax Calculation or to submit a written objection to

such Calculations with support documentation by no later than April 13, 2015. As of October 30, 2015, the Monitor had not received any objections from the 34 Taxing Authorities that were owed \$0 for past sales tax liabilities and an additional 16 Taxing Authorities had either accepted their respective Tax Calculation as the balance owed to them or settled at amounts greater than their respective Tax Calculation, but equal to or lower than their Individual State Reserve Cap.

D. On or about October 30, 2015, the Monitor sent follow-up letters (the “Follow-Up Letters”) to the nine remaining Taxing Authorities (the “Remaining Taxing Authorities”), which included a check equal to the respective Tax Calculations owed to each Taxing Authority. The Follow-Up Letters explained that by cashing the check, the respective Taxing Authority would be releasing the Debtors of any and all debts associated with the Potential Sales Tax Liability and would be accepting the payment in full and final satisfaction of any and all sales tax liability, including penalties and interest, of the Debtors due and owing to the respective Taxing Authorities. From this process, five of the Remaining Taxing Authorities cashed the check sent to them and the Monitor initiated discussions with the remaining four Taxing Authorities, who all concluded that the Debtors did not owe any sales tax to the respective Taxing Authorities.

E. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to sections 105(a), 1507, 1521, 1525, and 1527 of the Bankruptcy Code, and will not cause hardship to any party in interest that is not outweighed by the benefits of the relief granted herein.

F. The release of the Sales Tax Reserve and other relief granted through this Order, will in accordance with section 1507(b) of the Bankruptcy Code reasonably assure:

(i) the just treatment of all administrative claims against or interests in the Debtors' property;

(ii) the protection of creditors still awaiting distributions under the CCAA Plan against prejudice and inconvenience in the processing of claims in the Canadian Proceeding; and (iii) the distribution of proceeds of the Debtors' property as set forth in the CCAA Plan, which is substantially in accordance with the order prescribed in the Bankruptcy Code.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted as set forth herein.
2. The Monitor and the Debtors have fulfilled all obligations in connection with the Sales Tax Liability Process and took all necessary and appropriate efforts and steps in connection with same. The Potential Sales Tax Liabilities that formed the basis for the Sales Tax Reserve have been resolved and the Debtors do not have any further liabilities in connection with the Potential Sales Tax Liability in the United States.
3. Each Taxing Authority in an Outstanding State shall, to the fullest extent provided in the CCAA Plan, the Sanction Order, the Sanction Recognition Order, the Sales Tax Order, and this Order be forever barred, estopped, and enjoined from asserting a claim in connection with the Potential Sales Tax Liability against the Releasees (including each of the Debtors, and as such term is defined in the Sanction Recognition Order) and the Releasees' property shall be forever discharged from any and all indebtedness, liability, or obligation with respect to any claim for Potential Sales Tax Liability and shall not be entitled to any further distribution under the CCAA Plan.
4. By entry of this Order, the Sales Tax Reserve is hereby released and the funds in the Sales Tax Reserve are available under the Administrative Costs Reserve that is

being held by the Monitor, on behalf of the Arctic Glacier Parties, to be used in accordance with the CCAA Plan.

5. Subject to the terms and conditions of the Claims Procedure Order and the Claims Procedure Recognition Order, under which the Monitor's and the Debtors' rights are fully preserved, nothing in this Order shall impair, prejudice, waive, or otherwise affect the rights of the Monitor to seek further assistance of this Court, including, but not limited to, through the commencement of proceedings in this Court pursuant to sections 502(c) and/or 505 of the Bankruptcy Code, in resolving any future dispute between a Taxing Authority and the Monitor regarding the settlement reached by the parties with regards to any Potential Sales Tax Liability.

6. The Debtors, the Monitor, and the CPS, as the case may be, are authorized and directed to take all steps and actions necessary or appropriate to implement the terms of this Order, and all such steps and actions are approved.

7. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2016

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The Honorable Kevin Gross  
United States Bankruptcy Judge

**EXHIBIT B**

**Twenty-Third Monitor's Report**

**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 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")**

**TWENTY-THIRD REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
NOVEMBER 9, 2015**

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**Appendix A – List of the Applicants**

**Appendix B – U.S. Unitholder Claims Procedure Recognition Order, dated July 8, 2015**

**Appendix C – Letter to the Monitor from the State of California Franchise Tax Board, dated September 8, 2015**

## 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. ("**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 United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") recognized the CCAA Proceedings as a foreign main proceeding and appointed the Monitor as foreign representative of the Applicants by Order dated March 16, 2012 (the "**Recognition Order**").
- 1.2 The Monitor has previously filed twenty-two reports with the Canadian Court. Capitalized terms used but not otherwise defined in this report (the "**Twenty-Third 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 January 21, 2015, as may be further amended, supplemented or restated from time to time in accordance with the terms therein (the "**Plan**").
- 1.3 The sale transaction for substantially all of the Arctic Glacier Parties' business and assets (the "**Sale Transaction**") closed on July 27, 2012. The business formerly operated by the

Arctic Glacier Parties continues to be carried on by the Purchaser. The Monitor continues to hold significant funds as a result of the Sale Transaction and other receipts.

- 1.4 On September 5, 2012, the Canadian Court issued an order approving a claims process to resolve claims against the Arctic Glacier Parties (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 an Order dated September 14, 2012. Eighty-three parties filed Proofs of Claim with the Monitor.
- 1.5 The Claims Procedure Order contemplated a further order of the Canadian Court to provide an appropriate process for resolving disputed Claims. Accordingly, on March 7, 2013, the Canadian Court issued such an Order (the “**Claims Officer Order**”). 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 Canadian Court.
- 1.6 On May 21, 2014, the Canadian Court issued an order (the “**Meeting Order**”) with respect to 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 Following a meeting of the unitholders and a deemed meeting of the Affected Creditors, on September 5, 2014, the Canadian Court issued an order that, among other things, sanctioned and approved the Plan (the “**Sanction Order**”). On September 16, 2014, the U.S. Court entered an order recognizing and giving full force and effect to the Sanction Order in the United States.
- 1.8 The Monitor’s Nineteenth Report to Court dated November 7, 2014 (the “**Nineteenth Report**”) was filed in connection with certain U.S. sales tax returns that the Monitor had become aware had not been filed, nor had the associated sales taxes been collected and remitted in certain U.S. states and localities (the “**Outstanding States**”) where the Arctic Glacier Parties conducted business (the “**U.S. Sales Tax Issue**”). Also on November 7, 2014, A&M, in its capacity as Monitor and as foreign representative of the Applicants, served motion materials in the U.S. Court in connection with the U.S. Sales Tax Issue (the “**U.S. Sales Tax Motion**”).
- 1.9 The U.S. Sales Tax Motion was heard by the U.S. Court on December 12, 2014 and the U.S. Court granted an order (the “**U.S. Plan Implementation Order**”) that, among other things:
- a) established limits on the maximum potential claims 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 (individually, the “**State Sales Tax Liability Cap**”);

- b) authorized and directed the Monitor to establish a reserve from the Administrative Costs Reserve in the amount of \$2,000,828, being the aggregate amount of the State Sales Tax Liability Caps (the “**Administrative Sales Tax Reserve**”);
- c) approved deadlines for the Taxing Authorities to dispute the determination of the aforementioned limits to the Taxing Authorities’ potential claims;
- d) approved the form and manner of notice provided to such Taxing Authorities; and
- e) declared 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, among other things, sufficient to satisfy the condition precedent to Plan implementation set out in Section 10.3(d) of the Plan, being that (i) 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 (ii) all taxes required to be paid in respect thereof have been or will be paid.

1.10 On January 22, 2015 (the “**Plan Implementation Date**”), the Plan was successfully implemented after the Monitor certified that the conditions precedent set out in Section 10.3 of the Plan had been satisfied or waived in accordance with the Plan. Accordingly, on the Plan Implementation Date and pursuant to the Plan, the Monitor, on behalf of the Applicants, among other things:

- i. used the Available Funds to fund the reserves and distribution cash pools set out in the Plan;

- ii. distributed the Affected Creditors' Distribution Cash Pool to each Affected Creditor in the amount of such creditor's Proven Claim; and
- iii. transferred \$54,498,863.58 (the "**Initial Distribution**") from the Unitholders' Distribution Cash Pool to the Transfer Agent for distribution to Registered Unitholders as of December 18, 2014 (the "**Initial Distribution Record Date**").

1.11 On June 2, 2015, the Canadian Court issued an order approving a claims process to identify and determine certain potential claims relating to the Initial Distribution (the "**Unitholder Claims Process**") and, among other things, authorizing, directing and empowering the Monitor to take such actions as contemplated by the Unitholder Claims Process (the "**Unitholder Claims Procedure Order**"). The Unitholder Claims Process provided for a Unitholder Claims Bar Date of July 28, 2015 in respect of claims against AGIF arising from any action or omission on or after the setting of the Initial Distribution Record Date in connection with the Initial Distribution ("**Initial Distribution Claims**"), or a claim against AGIF's Officers or Trustees in connection with an action or omission occurring on or after the setting of the Initial Distribution Record Date in connection with or related to the Initial Distribution ("**O&T Claims**").

1.12 The purpose of this Twenty-Third Report of the Monitor (the "**Twenty-Third Report**") is to provide the Canadian Court, the U.S. Court, Affected Creditors, Unitholders and other interested parties with an update regarding:

- a) the Unitholder Claims Process;
- b) post-Plan implementation steps to be completed by the Arctic Glacier Parties and the Monitor;

- c) the U.S. Sales Tax Issue;
- d) the Claims Process;
- e) the Arctic Glacier Parties' receipts and disbursements for the period from May 23, 2015 to October 31, 2015; and
- f) the Monitor's activities since the date of the Twenty-Second Report, being May 27, 2015.

1.13 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-subsidiaries> (the "**Website**").

## **2.0 TERMS OF REFERENCE**

2.1 In preparing this Twenty-Third Report, the Monitor has necessarily relied upon representations made by certain former senior management of the Arctic Glacier Parties. 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 Twenty-Third Report or otherwise used to prepare this Twenty-Third Report.

2.2 The information contained in this Twenty-Third 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.

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

### 3.0 THE UNITHOLDER CLAIMS PROCESS

3.1 As described in paragraph 5.6 of the Twenty-Second Report, certain Persons had contacted AGIF and/or the Monitor shortly after the Plan Implementation Date to assert that they did not receive a portion of the Initial Distribution despite being entitled to it (collectively, the “**Unitholder Assertions**”). In particular, one unitholder asserted that he (and corporations controlled by him and certain family members) were entitled to, but did not receive, approximately \$2 million of the Initial Distribution (the “**Brodski Parties**”). As a result of the Unitholder Assertions, the Monitor proposed the Unitholder Claims Process to establish a procedure for the identification and determination of all Initial Distribution Claims, O&T Claims and O&T Indemnity Claims that may be asserted or made in whole or in part against AGIF and/or its Officers and Trustees, as the case may be. As set out above, on June 2, 2015, the Canadian Court issued an order approving the Unitholder Claims Process.

3.2 On receipt of the Unitholder Claims Procedure Order, A&M, in its capacity as Monitor and as foreign representative of the Applicants, served motion materials in the U.S. Court seeking recognition of the Unitholder Claims Procedure Order. The Brodski Parties filed an objection to the Monitor's motion. After a period of negotiation, this objection was resolved by providing for a modified process to resolve the Brodski Parties' Initial Distribution Claims and O&T Claims. As a result, on July 8, 2015, the U.S. Court

recognized the Unitholder Claims Procedure Order (the “**U.S. Unitholder Claims Procedure Recognition Order**”) on the following terms:

- a) the Brodski Parties, separately or together, were required to submit an Initial Distribution Proof of Claim or an O&T Proof of Claim in accordance with the Unitholder Claims Procedure Order before the Unitholder Claims Bar Date;
- b) the Monitor was required to ask the Honourable Mr. Justice Ground to, in his capacity as the Unitholder Claims Officer, mediate any disputes in respect of any claims brought by the Brodski Parties. Mediation logistics were to be agreed between the Brodski Parties, the Monitor and AGIF, each acting reasonably, and the Unitholder Claims Officer; and
- c) the entry of the U.S. Unitholder Claims Procedure Recognition Order and the Unitholder Claims Procedure Order would be without prejudice to the Brodski Parties’ ability to commence an adversary proceeding in the U.S. Court as long as such proceeding was commenced on or before October 30, 2015.

3.3 The U.S. Unitholder Claims Procedure Recognition Order is attached as **Appendix “B”**.

#### **Notice of the Claims Process**

3.4 In accordance with the provisions of the Unitholder Claims Procedure Order, the Monitor took the following steps:

- a) on June 5, 2015, posted a copy of the Proof of Claim Document Package on the Monitor’s Website; and

- b) on June 8, 2015, caused the Notice to Unitholders to be published in (i) the *Globe and Mail* newspaper (National Edition), (ii) the *Wall Street Journal* (National Edition), and (iii) the *Winnipeg Free Press*.

### **Summary of Claims Received**

- 3.5 The Unitholder Claims Bar Date was established as July 28, 2015. By the Unitholder Claims Bar Date, the Monitor had received sixteen Initial Distribution Proofs of Claim, thirteen O&T Proofs of Claim and no O&T Indemnity Proofs of Claim. Thirteen of each of the Initial Distribution Proofs of Claim and O&T Proofs of Claim were received from the Brodski Parties.
- 3.6 As such, the Monitor received only three Initial Distribution Proofs of Claim from Persons not related to the Brodski Parties. After discussions and correspondence with the Monitor and the Monitor's counsel, each of these Persons withdrew their respective Initial Distribution Proof of Claim. Accordingly, the Brodski Parties are the only Persons that continue to advance claims under the Unitholder Claims Process. In total, the Brodski Parties asserted Initial Distribution Claims and O&T Claims both in the amount of \$1,966,568.18, plus interest and costs.

### **The Brodski Parties' Claims**

- 3.7 In accordance with the U.S. Unitholder Claims Procedure Recognition Order, the Monitor asked the Honourable Mr. Justice Ground, in his capacity as the Unitholder Claims Officer, to mediate any disputes in respect of any Initial Distribution Claims or O&T Claims brought by the Brodski Parties. The Honourable Mr. Justice Ground agreed to do so.

- 3.8 The U.S. Unitholder Claims Procedure Recognition Order also stated that mediation logistics were to be agreed to between the Brodski Parties, the Monitor and AGIF, each acting reasonably, and the Unitholder Claims Officer. All of the mediation logistics were agreed to between the parties. The parties, at Mr. Brodski's request, agreed to attend in New York for the mediation.
- 3.9 The mediation occurred on October 15, 2015. AGIF and its Canadian and U.S. counsel, the Monitor and its Canadian counsel, and Mr. Brodski and his U.S. counsel attended the mediation. The mediation was not successful.
- 3.10 Following the unsuccessful mediation, the Brodski Parties commenced an adversary proceeding (the "**Brodski Proceeding**") on October 30, 2015 by filing a complaint in the U.S. Court (the "**Brodski Complaint**"). The Brodski Parties named AGIF as well as the individual Trustees of AGIF as defendants in the Brodski Complaint. The Brodski Parties assert damages of almost \$2 million plus reasonable attorney's fees and costs, prejudgment interest, punitive damages, treble damages and allowance of the Brodski Parties' claims and a distribution pursuant to the Plan.
- 3.11 As noted in the Twenty-Second Report, the Monitor has confirmed that the actions which the Plan required AGIF or the Monitor to take to deliver the Initial Distribution (the "**Preliminary Distribution Steps**") were, in fact, taken. Also as noted in the Twenty-Second Report, the Monitor is informed that AGIF's position continues to be that it is not responsible for errors, if any, in the delivery of the Initial Distribution after the Preliminary Distribution Steps had been completed. The Monitor is in the process of reviewing the Brodski Complaint and will continue to monitor the Brodski Proceeding.

3.12 The U.S. Court has scheduled a pretrial conference in the proceeding for December 18, 2015, at 11:00 a.m. in Delaware. The Monitor will provide further updates in respect of the Brodski Complaint and the Brodski Proceeding in its next report.

#### **4.0 POST-PLAN IMPLEMENTATION DATE TRANSACTIONS**

4.1 As described in the Twenty-Second Report, pursuant to the Plan, each of the Arctic Glacier Parties, or the Monitor on their behalf, as the case may be, were to take the following steps after the Plan Implementation Date:

- a) the Monitor, on behalf of the Arctic Glacier Parties, was to take all steps necessary to pay any amounts required to be paid to an Affected Creditor or to the Unitholders after the Plan Implementation Date, in accordance with the Plan;
- b) (i) the Monitor, on behalf of the Arctic Glacier Parties, was to take all steps necessary to make any distributions, payments, or transfers in order to fund, or otherwise in connection with, the making of the payments referred to in subparagraph (a) above; and (ii) the Arctic Glacier Parties, in consultation with the Monitor, were to take all steps necessary to undertake any other transactions as between the Arctic Glacier Parties in order to fund, or otherwise take steps in connection with, the making of the payments referred to in subparagraph (a) above; and
- c) (i) each of the Arctic Glacier Parties, in consultation with the Monitor, was to take all steps necessary to merge, wind-up, liquidate, terminate, and/or dissolve or undertake any other steps in connection therewith, including causing AGIF's Trust Units to cease to be listed and traded on the Canadian Securities Exchange

on (and for greater certainty, not prior to) the Final Distribution Date; and (ii) the Monitor, on behalf of the Arctic Glacier Parties, was to make any distributions, payments or transfers in connection therewith (the “**Post-Plan Implementation Date Transactions**”).

- 4.2 In order to facilitate the satisfaction of Proven Claims and the distribution that was made to the Unitholders, Schedule “B” to the Plan lists a series of specific steps which include steps, assumptions, distributions, transfers, payments, contributions, reductions of capital, settlements and releases of various of the Arctic Glacier Parties (the “**Schedule B Steps**”) that are deemed to occur in the order and as provided for in the Plan.
- 4.3 Since the date of the Twenty-Second Report, the Arctic Glacier Parties and their legal counsel, with the assistance of the Monitor, have been working to complete the Post-Plan Implementation Date Transactions and the Schedule B Steps and continue to do so. The Post-Plan Implementation Date Transactions and Schedule B Steps must be completed in a specific order, thereby requiring ongoing actions to be taken by the Arctic Glacier Parties and their legal counsel, with the assistance of the Monitor. The Monitor will provide further updates in respect of the Post-Plan Implementation Date Transactions and the Schedule B Steps in subsequent reports.

## **5.0 THE U.S. SALES TAX ISSUE**

- 5.1 In accordance with the U.S. Plan Implementation Order, the Monitor, in its capacity as foreign representative of the Arctic Glacier Parties, contacted the Taxing Authorities for the purpose of resolving the U.S. Sales Tax Issue.

- 5.2 The Monitor provided each Taxing Authority with a calculation (the “**Tax Calculation**”) of the potential sales tax liability, including interest and penalties, of the Arctic Glacier Parties, if any, to the applicable Taxing Authority. The Monitor requested that each Taxing Authority either accept the Tax Calculation or provide a letter of objection describing the basis for the objection along with supporting materials by April 13, 2015.
- 5.3 In total, 61 Taxing Authorities with combined Tax Calculations totaling \$774,867 were contacted by the Monitor (the Tax Calculation for 34 of these Taxing Authorities was nil). None of the 34 Taxing Authorities with nil Tax Calculations have advised that they hold the view that the Tax Calculations should be greater than nil.
- 5.4 Of the 27 Taxing Authorities contacted that had Tax Calculations that were greater than nil (“**Positive Balance Tax Calculations**”), 16 Taxing Authorities either accepted their respective Tax Calculation as the balance owing or settled at amounts greater than their respective Tax Calculation but less than or equal to their respective State Sales Tax Liability Cap and have been paid such amounts. To date, \$826,479 has been paid out of the Administrative Sales Tax Reserve in respect of the U.S. Sales Tax Issue to these Taxing Authorities.
- 5.5 In addition, two Taxing Authorities with combined Tax Calculations of \$15,937 indicated that they were not owed any sales taxes by the Arctic Glacier Parties and declined any payment.
- 5.6 The remaining nine Taxing Authorities with Positive Balance Tax Calculations (totaling \$11,593) did not respond when contacted by the Monitor. Accordingly, on October 30, 2015 the Monitor contacted those parties (the “**Remaining Taxing Authorities**”) by

letter (the “**Payment Letters**”) to follow up. The original notices were attached to the respective Payment Letters which also included a cheque in the amount of the respective Tax Calculation for each of the Remaining Taxing Authorities. The Payment Letters indicated that, by cashing the cheque, the respective Taxing Authority releases the Identified AG Parties of any and all debts associated with the U.S. Sales Tax Issue and accepts the payment in full and final satisfaction of any and all sales tax liability, including penalties and interest, of the Identified AG Parties due and owing to the respective Taxing Authority. To the date of this report none of these cheques have been cashed.

- 5.7 The combined State Sales Tax Liability Cap of the nine Remaining Taxing Authorities is \$28,984, which is the maximum remaining amount potentially payable in respect of the U.S. Sales Tax Issue. Accordingly, it is the Monitor’s intention at the next appropriate attendance before the U.S. Court to request the U.S. Court to release and discharge the Administrative Sales Tax Reserve, which would thereby result in the remainder of the Administrative Sales Tax Reserve being available for the payment of Administrative Reserve Costs in accordance with the Plan. As the funds held by the Monitor in the estate bank accounts in respect of the Administrative Costs Reserve, after providing for the Administrative Sales Tax Reserve, will be sufficient to satisfy the estates’ anticipated disbursements during the requested Stay Period, the Monitor does not believe that an earlier attendance before the U.S. Court to deal with the Administrative Sales Tax Reserve is necessary.

## 6.0 THE CLAIMS PROCESS

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

6.2 As last reported in the Twenty-Second Report, the Monitor received 83 Proofs of Claim, with Claim amounts totaling at least \$547.5 million (combined currency), including Deemed Proven Claims of the DOJ and the Direct Purchaser Claimants, and also received 4 DO&T Proofs of Claim.

6.3 Of the 83 Claims received:

- 23 Claims have been proven in amounts totaling approximately \$33.5 million (the “**Proven Claims**”);
- two Claims totaling \$13.8 million are yet to be resolved (the “**Unresolved Claims**”); and
- approximately \$500.2 million of the total amount of Claims filed has been disallowed, withdrawn or compromised.

6.4 All creditors holding a Proven Claim as at the Plan Implementation Date received payment in full on account of their Proven Claims, with interest, on the Plan Implementation Date.

6.5 The two remaining Unresolved Claims are as follows:

The Arctic Glacier Parties - Unresolved Claims	
	Amount (\$000's)
McNulty Claim	13,610
City of New York	218
<b>TOTAL, excluding interest</b>	<b>13,828</b>

6.6 As last described in the Twenty-Second Report, the Plan provides for the establishment and administration of the Unresolved Claims Reserve. Including interest, the amount of the Unresolved Claims Reserve is currently approximately \$16.022 million. This amount was established based on the amount of the Unresolved Claims, including interest on the Plan Implementation Date. At that time, in addition to the current Unresolved Claims, the Unresolved Claims Reserve also included the amount of the State of California Franchise Tax Board Claim of approximately \$2.2 million, plus interest. The State of California Franchise Tax Board Claim, as described further below, has since been withdrawn.

6.7 In accordance with the Plan, once all Unresolved Claims have been finally determined in accordance with the Claims Procedure Order and the Claims Officer Order and when all Proven Claim Amounts have been paid, any balance that remains in the Unresolved Claims Reserve will be deemed to be transferred to the Administrative Costs Reserve.

### **The McNulty Claim**

6.8 The Monitor provided an update on the McNulty Claim in its twenty-first report dated April 27, 2015 (the “**Twenty-First Report**”). In particular, as reported in paragraphs 3.11 to 3.13 of the Twenty-First Report, McNulty's counsel filed a motion for leave to amend his Claim in the Claim adjudication with Claims Officer Ground, seeking to add an

antitrust claim. After receiving submissions from the Arctic Glacier Parties opposing the amendment, Claims Officer Ground permitted McNulty to amend his Claim in the claims adjudication. As a result, the parties have been engaged in negotiations regarding the scope of discovery in the context of the McNulty Claim and have sought direction from Claims Officer Ground. The parties are making progress on discovery and are seeking to complete that process in the near term.

6.9 As described in paragraph 4.1 of the Twenty-First Report, on April 13, 2015, McNulty filed in the Michigan Court: (i) the Motion to Sever for an order permitting him to conduct discovery and proceed against the Non-Bankrupt Defendants; and (ii) the Sealed Motion to Amend for, among other things, leave to amend his complaint in the McNulty Action to revive claims against Corbin and Knowlton (the “**Corbin/Knowlton Claims**”) that were previously dismissed by the Michigan Court (the “**McNulty Michigan Motions**”).

6.10 For the reasons described in more detail in paragraphs 4.2 to 4.6 of the Twenty-First Report, the Monitor is of the view that McNulty’s filing of the McNulty Michigan Motions violates the Plan, the Sanction Order, and the U.S. Recognition Order.

6.11 The Arctic Glacier Parties have opposed the McNulty Michigan Motions on the basis, among others, that the requested relief is in violation of the Plan, the Sanction Order, and the U.S. Recognition Order. The Arctic Glacier Parties also sought to dismiss the Corbin/Knowlton Claims (to the extent not already dismissed) as such claims were released under the Plan as well as the claims against the Arctic Glacier Parties as such claims are being addressed through the Claims Procedure.

6.12 The McNulty Michigan Motions have been scheduled for December 9, 2015, in the Michigan Court.

### The City of New York Claim

6.13 As described in the Twenty-Second Report, the Claim submitted by the City of New York (the “**NYC Claim**”) is for \$218,025 and is comprised of:

- general corporate taxes of \$60,750 in respect of the Applicant, Diamond Ice Cube Company Inc. (“**Diamond Ice**”); commercial rent tax of \$135,000 in respect of the Applicant, Arctic Glacier New York Inc.; and commercial motor vehicle tax of \$1,620 in respect of Arctic Glacier Losquadro Inc., a predecessor company to the Applicant, Arctic Glacier New York Inc., all for the period January 1, 2008 to February 22, 2012;
- general corporate taxes of \$20,250 in respect of the Applicant, AGII for the period January 1 to February 22, 2012; and
- commercial motor vehicle taxes of \$405 in respect of Diamond Ice for the period June 1 to 20, 2009.

6.14 On September 12, 2013, the Monitor issued a Notice of Revision or Disallowance in respect of the NYC Claim disallowing the Claim in its entirety. The deadline for the City of New York to respond to the Notice of Disallowance in respect of its Claim was set as October 3, 2013. The Dispute Period was, however, as described in the Twenty-Second Report, adjourned by the Monitor at the request of the City of New York.

- 6.15 Following the adjournment of the Dispute Period, the City of New York requested certain information which the Monitor, with the assistance of the Applicants' former Director of Tax, provided and which, in the Monitor's view, is sufficient to support the disallowance of the NYC Claim. The City of New York also requested additional information that the Monitor was not able to provide and which the Monitor determined was too onerous and not proportional to the amount claimed.
- 6.16 While the Monitor is hopeful that the NYC Claim will be resolved through ongoing discussions between the Monitor and the City of New York, it has also advised the City of New York that it has resumed the Dispute Period in respect of the NYC Claim and has established a deadline of November 16, 2015 by which the City of New York must file a Notice of Dispute if it intends to dispute the Notice of Revision or Disallowance issued by the Monitor in respect of the NYC Claim.

#### **The State of California Franchise Tax Board Claim**

- 6.17 Since the date of the Twenty-Second Report, the claim filed by the State of California Franchise Tax Board in the amount of approximately \$2.2 million (the "**Franchise Tax Claim**") has been resolved.
- 6.18 The Franchise Tax Claim was filed in respect of franchise taxes alleged to be owing in association with the purchase of Jack Frost Ice Service, Inc. ("**Jack Frost**") by the Applicant, Arctic Glacier California Inc. The amounts claimed in the Franchise Tax Claim were, pursuant to the provisions of the agreement governing the purchase and sale of Jack Frost, the obligation of the former owners of Jack Frost. Those former owners acknowledged their indemnification obligations to the Applicants and, pending resolution

of the Franchise Tax Claim and pursuant to an escrow agreement dated August 8, 2013, deposited \$100,000 in an escrow account (the “**Escrow Funds**”) in support of their indemnity obligations.

6.19 The former owners of Jack Frost disputed the assessment underlying the Franchise Tax Claim through an Administrative Settlement Process with the State of California Franchise Tax Board (the “**FTB**”).

6.20 The Administrative Settlement Process culminated in a settlement agreement dated July 8, 2015, between the former owners of Jack Frost, the FTB, and Jack Frost and Arctic Glacier California Inc. by and through the CPS and the Monitor, pursuant to which the former owners of Jack Frost agreed to pay \$900,000, including interest and penalties (the “**Settlement Amount**”) to the FTB on behalf of Jack Frost no later than August 15, 2015 as full and final settlement of the amounts claimed in the Franchise Tax Claim (the “**FTB Settlement Agreement**”). The FTB Settlement Agreement also provided that, upon receipt of the Settlement Amount by the FTB, the Franchise Tax Claim is deemed withdrawn and the FTB would take no further action upon that Claim.

6.21 By letter to the Monitor dated September 8, 2015, attached as **Appendix “C”**, the FTB confirmed that it received the Settlement Amount on August 13, 2015 and that the account related to the Franchise Tax Claim was closed.

6.22 In accordance with the FTB Settlement Agreement, on September 11, 2015, the Monitor’s counsel provided the executed Instructions to Release Escrow Funds to the escrow agent to provide for the release of the Escrow Funds to the former owners of Jack Frost.

## **7.0 RECEIPTS AND DISBURSEMENTS SINCE THE TWENTY-SECOND REPORT**

7.1 During the period from May 23, 2015 to October 31, 2015 (the “**Reporting Period**”), the Applicants had U.S. and Canadian dollar net cash outflows of approximately \$1.18 million and CAD\$174,000, respectively.

7.2 Excluding transfers between the Monitor’s U.S. and Canadian dollar trust bank accounts, receipts consist primarily of tax refunds of approximately CAD\$335,000.

7.3 Disbursements, also excluding transfers between the Monitor’s U.S. and Canadian dollar trust bank accounts, consist primarily of U.S. dollar professional fees and expenses totaling approximately \$657,000 and Canadian dollar professional fees and expenses of approximately CAD\$822,000 which collectively include fees and expenses paid to the Monitor, its legal counsel, the CPS, the Applicants’ legal counsel, the Applicants’ tax consultants, and other professionals involved with these CCAA Proceedings. In addition, disbursements include the purchase of a three-year D&O run-off insurance policy in the amount of approximately CAD\$284,000, and other expenses including income taxes, payments to Taxing Authorities in respect of the U.S. Sales Tax Issue, and disbursements of an administrative nature of approximately \$24,400 and CAD\$17,200.

7.4 As at October 31, 2015, the Monitor is holding approximately \$23.6 million and CAD\$261,000, all of which is being held in interest-bearing accounts in the name of the Monitor, on behalf of the Applicants.

7.5 The Plan provides that certain reserves and cash pools be maintained in respect of the remaining obligations of the estates. The funds held by the Monitor on behalf of the Applicants as at October 31, 2015, are divided among the reserves and cash pools as

follows: Unresolved Claims Reserve, approximately \$16.6 million; Insurance Reserve, approximately \$721,000; and Administrative Costs Reserve, approximately \$6.3 million, and CAD\$261,000. As provided by the U.S. Plan Implementation Order, the Administrative Costs Reserve includes the Administrative Sales Tax Reserve of approximately \$2 million.

## **8.0 THE STAY EXTENSION**

8.1 Pursuant to the Initial Order and subsequent Orders of the Canadian Court, the Stay Period was granted and extended until December 18, 2015. The Monitor requests an extension of the Stay Period to September 30, 2016.

8.2 The Monitor believes that an extension of the Stay Period until September 30, 2016 is appropriate, as it will allow needed time for the Monitor, in consultation with the Applicants, to, among other things, continue:

- a) implementing the steps contemplated by the Plan;
- b) finalizing the resolution of the U.S. Sales Tax Issue;
- c) working towards a resolution of the two remaining Unresolved Claims (the McNulty Claim and the NYC Claim); and
- d) working towards a resolution of the Brodski Proceeding.

8.3 The Monitor believes that the Arctic Glacier Parties have acted and continue to act in good faith and with due diligence in advancing the administration of these CCAA Proceedings.

## 9.0 ACTIVITIES OF THE MONITOR

9.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Twenty-Second Report, being May 27, 2015, have included the following:

- continuing to work through the Post-Plan Implementation Date Transactions and Schedule B Steps, pursuant to and in accordance with the Plan;
- responding to enquiries from Unitholders and other stakeholders;
- continuing to make non-confidential materials filed with the Canadian Court and with the U.S. Court publicly available on the Website;
- in accordance with the Unitholder Claims Procedure Order, arranging for the publication of a notice in respect of same in the *Wall Street Journal*, the *Globe and Mail*, and the *Winnipeg Free Press*;
- preparing this Twenty-Third Report;
- continuing to act as foreign representative in the Chapter 15 Proceedings;
- continuing to fulfill the Monitor's responsibilities pursuant to the Claims Procedure Order and the Claims Officer Order;
- communicating with insurance adjusters and with various plaintiffs' counsel regarding certain open insurance claims;
- communicating with the Applicants' insurance broker regarding a "buy-out" insurance policy that would address all currently outstanding and yet to be filed insurance claims;

- attending the June Stay Extension Motion and the Unitholder Claims Procedure Motion;
- attending the mediation with the AGIF and the Brodski Parties held on October 15, 2015;
- arranging for the preparation and filing of the tax returns for the year ended December 31, 2014 of the U.S. Applicants;
- maintaining estate bank accounts, overseeing the 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; and
- preparing and filing monthly GST/HST returns and various other statutory returns.

\*\*\*\*\*

All of which is respectfully submitted to the Court of Queen's Bench this 9<sup>th</sup> day of  
November, 2015.

**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 cursive script, appearing to read "A Hutchens", is written above a horizontal line.

Per: Alan Hutchens, Senior Vice-President

**EXHIBIT C**

**Twenty-Fourth Monitor's Report**

**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 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")**

**TWENTY-FOURTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.  
AUGUST 30, 2016**

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- Appendix B – Dismissal Order and Memorandum of Opinion in Respect of the Brodski Complaint, dated July 13, 2016**
- Appendix C – Briefing Schedule Order, dated August 18, 2016**
- Appendix D – Opinion and Order Granting Defendant Home City Ice Company's Motion for Summary Judgement, dated August 17, 2016**
- Appendix E – Michigan Opinion and Order, dated February 8, 2016**
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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. ("**A&M**") was appointed as Monitor (the "**Monitor**") in respect of an application filed by Arctic Glacier Income Fund ("**AGIF**"), Arctic Glacier Inc. ("**AGI**"), Arctic Glacier International Inc. ("**AGII**") 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 United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") recognized the CCAA Proceedings as a foreign main proceeding and appointed the Monitor as foreign representative of the Applicants by Order dated March 16, 2012.
- 1.2 The Monitor has previously filed twenty-three reports with the Canadian Court. Capitalized terms used but not otherwise defined in this report (the "**Twenty-Fourth 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 January 21, 2015, as may be further amended, supplemented or restated from time to time in accordance with the terms therein (the "**Plan**").
- 1.3 The sale transaction for substantially all of the Arctic Glacier Parties' business and assets (the "**Sale Transaction**") closed on July 27, 2012. The business formerly operated by the

Arctic Glacier Parties continues to be carried on by the Purchaser. The Monitor continues to hold significant funds as a result of the Sale Transaction and other receipts.

- 1.4 On September 5, 2012, the Canadian Court issued an order approving a claims process to resolve claims against the Arctic Glacier Parties (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 an Order dated September 14, 2012. Eighty-three parties filed Proofs of Claim with the Monitor.
- 1.5 The Claims Procedure Order contemplated a further order of the Canadian Court to provide an appropriate process for resolving disputed Claims. Accordingly, on March 7, 2013, the Canadian Court issued such an Order (the “**Claims Officer Order**”). The Claims Officer Order, among other things, provided that in the event that a dispute raised in a Notice of Dispute was 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 would refer the dispute raised in the Notice of Dispute to either a Claims Officer or to the Canadian Court.
- 1.6 On May 21, 2014, the Canadian Court issued an order (the “**Meeting Order**”) with respect to 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 Following a meeting of the unitholders and a deemed meeting of the Affected Creditors, on September 5, 2014, the Canadian Court issued an order that, among other things, sanctioned and approved the Plan (the “**Sanction Order**”). On September 16, 2014, the U.S. Court entered an order recognizing and giving full force and effect to the Sanction Order in the United States.
- 1.8 The Monitor’s Nineteenth Report to Court dated November 7, 2014, described the Monitor’s discovery that certain U.S. sales tax returns may not have been filed and that certain associated sales taxes may not have been collected and remitted in certain U.S. states and localities (the “**Outstanding States**”) where the Arctic Glacier Parties had conducted business (the “**U.S. Sales Tax Issue**”). Also on November 7, 2014, A&M, in its capacity as Monitor and as foreign representative of the Applicants, served motion materials in the U.S. Court in connection with the U.S. Sales Tax Issue (the “**U.S. Sales Tax Motion**”).
- 1.9 The U.S. Sales Tax Motion was heard by the U.S. Court on December 12, 2014, and the U.S. Court granted an order (the “**U.S. Plan Implementation Order**”) that, among other things:
- a) established limits on the maximum potential claims of various U.S. state and local sales taxing authorities (the “**Taxing Authorities**”) in the Outstanding States for sales taxes and/or associated interest and penalties (the “**State Sales Tax Liability Caps**” and, individually, a “**State Sales Tax Liability Cap**”);

- b) authorized and directed the Monitor to establish a reserve from the Administrative Costs Reserve in the amount of \$2,000,828, being the aggregate amount of the State Sales Tax Liability Caps (the “**Sales Tax Reserve**”);
- c) approved deadlines for the Taxing Authorities to dispute the quantum of the State Sales Tax Liability Caps;
- d) approved the form and manner of notice provided to such Taxing Authorities; and
- e) declared that the process followed by the Monitor and the CPS to ascertain potential sales tax liabilities, and the steps taken by the Monitor and the CPS to address any outstanding sales tax obligations and liabilities were, among other things, sufficient to satisfy the condition precedent to Plan implementation set out in Section 10.3(d) of the Plan, being that (i) all tax returns required to be filed by or on behalf of the Arctic Glacier Parties had been or would be duly filed in all appropriate jurisdictions; and (ii) all taxes required to be paid in respect thereof had been or would be paid.

1.10 On January 22, 2015 (the “**Plan Implementation Date**”), the Plan was successfully implemented after the Monitor certified that the conditions precedent set out in Section 10.3 of the Plan had been satisfied or waived in accordance with the Plan. Accordingly, on the Plan Implementation Date and pursuant to the Plan, the Monitor, on behalf of the Applicants, among other things:

- a) used the Available Funds to fund the reserves and distribution cash pools set out in the Plan;

- b) distributed the Affected Creditors' Distribution Cash Pool to each Affected Creditor in the amount of such creditor's Proven Claim; and
- c) transferred \$54,498,863.58 (the "**Initial Distribution**") from the Unitholders' Distribution Cash Pool to the Transfer Agent for distribution to Registered Unitholders as of December 18, 2014 (the "**Initial Distribution Record Date**").

1.11 On June 2, 2015, the Canadian Court issued an order approving a claims process to identify and determine certain potential claims relating to the Initial Distribution (the "**Unitholder Claims Process**") and, among other things, authorizing, directing and empowering the Monitor to take such actions as contemplated by the Unitholder Claims Process (the "**Unitholder Claims Procedure Order**"). The Unitholder Claims Process provided for a Unitholder Claims Bar Date of July 28, 2015, in respect of claims against AGIF arising from any action or omission on or after the setting of the Initial Distribution Record Date in connection with the Initial Distribution ("**Initial Distribution Claims**"), or claims against AGIF's Officers or Trustees in connection with an action or omission occurring on or after the setting of the Initial Distribution Record Date in connection with or related to the Initial Distribution ("**O&T Claims**").

1.12 On November 13, 2015, the Canadian Court issued an order (the "**Stay Extension Order**") extending the Stay Period to September 30, 2016.

1.13 The purpose of this Twenty-Fourth Report is to provide the Canadian Court, the U.S. Court, Affected Creditors, Unitholders and other interested parties with an update regarding:

- a) the Unitholder Claims Process;

- b) post-Plan implementation steps to be completed by the Arctic Glacier Parties and the Monitor;
- c) the U.S. Sales Tax Issue;
- d) the Claims Process;
- e) the Arctic Glacier Parties' receipts and disbursements for the period from November 1, 2015 to August 12, 2016; and
- f) the Monitor's activities since the date of the Twenty-Third Report (November 9, 2015).

1.14 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-subsidiaries> (the "Website").

## 2.0 TERMS OF REFERENCE

2.1 In preparing this Twenty-Fourth Report, the Monitor has relied upon unaudited financial information, books and records and financial information of the Arctic Glacier Parties (collectively, the "**Information**").

2.2 The Monitor has reviewed the information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the *Chartered Professional Accountants Canada Handbook* and,

accordingly, the Monitor expresses no opinion and does not provide any other form of assurance contemplated under CASs in respect of the Information.

2.3 The information contained in this Twenty-Fourth 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 Twenty-Fourth Report are expressed in United States dollars, which is the Arctic Glacier Parties' common reporting currency.

### **3.0 THE UNITHOLDER CLAIMS PROCESS**

3.1 As described in paragraph 5.6 of the Twenty-Second Report, certain Persons had contacted AGIF and/or the Monitor shortly after the Plan Implementation Date to assert that they did not receive a portion of the Initial Distribution despite being entitled to it. In particular, one unitholder asserted that he (and corporations controlled by him and certain family members) were entitled to, but did not receive, approximately \$2 million of the Initial Distribution (the "**Brodski Parties**"). The Unitholder Claims Process was established to identify and determine all Initial Distribution Claims, O&T Claims and O&T Indemnity Claims that may be asserted or made in whole or in part against AGIF and/or its Officers and Trustees, as the case may be. As set out above, on June 2, 2015, the Canadian Court issued an order approving the Unitholder Claims Process.

3.2 On July 8, 2015, the U.S. Court recognized the Unitholder Claims Procedure Order (the "**U.S. Unitholder Claims Procedure Recognition Order**") on the following terms:

- a) the Brodski Parties, separately or together, were required to submit an Initial Distribution Proof of Claim or an O&T Proof of Claim in accordance with the Unitholder Claims Procedure Order before the Unitholder Claims Bar Date;
- b) the Monitor was required to ask the Honourable Mr. Justice Ground to, in his capacity as Unitholder Claims Officer, mediate any disputes in respect of any claims brought by the Brodski Parties; and
- c) the entry of the U.S. Unitholder Claims Procedure Order and the Unitholder Claims Procedure Order would be without prejudice to the Brodski Parties' ability to commence an adversary proceeding in the U.S. Court as long as such proceeding was commenced on or before October 30, 2015.

### **The Unitholder Claims**

- 3.3 The Unitholder Claims Bar Date was established as July 28, 2015. As described in the Twenty-Third Report, the Brodski Parties are the only Persons who continue to advance claims under the Unitholder Claims Process (the “**Brodski Claims**”). The Brodski Parties have asserted Initial Distribution Claims and O&T Claims, both in the amount of \$1,966,568.18 plus interest and costs.
- 3.4 In accordance with the U.S. Unitholder Claims Procedure Recognition Order, the Monitor asked the Honourable Mr. Justice Ground, in his capacity as Unitholder Claims Officer, to mediate any disputes in respect of any Initial Distribution Claims or O&T Claims brought by the Brodski Parties. The Honourable Mr. Justice Ground agreed to do so.
- 3.5 The mediation proceeded on October 15, 2015 but was not successful.

- 3.6 Following the unsuccessful mediation, the Brodski Parties commenced an adversary proceeding (the “**Brodski Proceeding**”) on October 30, 2015, by filing a complaint in the U.S. Court (the “**Brodski Complaint**”). The Brodski Parties named AGIF as well as the individual Trustees of AGIF as defendants in the Brodski Complaint. The Brodski Parties asserted damages of almost \$2 million, plus reasonable attorney’s fees and costs, prejudgement interest, punitive damages, treble damages and allowance of the Brodski Claims and a distribution pursuant to the Plan.
- 3.7 On January 21, 2016, the defendants in the Brodski Complaint filed a motion to dismiss in respect of the Brodski Complaint (the “**Motion to Dismiss**”). The parties fully briefed the Motion to Dismiss and on April 19, 2016, the U.S. Court heard oral arguments.
- 3.8 On July 13, 2016, the U.S. Court issued a Memorandum Opinion addressing the Motion to Dismiss and an order granting the Motion to Dismiss in its entirety (the “**Dismissal Order**”). A copy of the Dismissal Order and the Memorandum Opinion are attached as **Appendix “B”**.
- 3.9 The Brodski Parties filed a Notice of Appeal on July 19, 2016 to appeal the Dismissal Order (the “**Brodski Appeal**”).
- 3.10 On July 21, 2016, the U.S. Court issued an oral order (the “**Brodski Appeal Oral Order**”) pursuant to the U.S. Court’s standing order dated September 11, 2012, regarding procedures to govern mediation of all appeals from the U.S. Court, which places such appeals in mandatory mediation. The Brodski Appeal Oral Order required the parties to advise the U.S. Court in a joint written submission of their respective positions regarding mediation. The Brodski Appeal Oral Order provides that should the parties jointly

request the matter be removed from the mandatory mediation requirement, they are to provide a briefing schedule and/or advise whether they believe a teleconference with a Magistrate Judge would be of assistance.

3.11 On August 4, 2016, the parties filed their joint written submission (the “**Joint Submission**”) with the U.S. Court indicating that they do not believe that a mediation would be successful or productive and noting that the parties had previously participated in a mediation that was not successful. The Joint Submission also proposed the following briefing schedule for the Brodski Appeal:

- i. September 23, 2016 – Appellants’ opening brief due;
- ii. October 21, 2016 – Appellees’ answering brief due; and
- iii. November 11, 2016 – Appellants’ reply brief due.

3.12 The proposed briefing schedule was accepted by an Order of the U.S. Court on August 18, 2016 (the “**Briefing Schedule Order**”), subject to the due date for the Appellants’ reply brief being changed to November 14, 2016. A copy of the Briefing Schedule Order is attached as **Appendix “C”**.

3.13 The Monitor will report further in respect of the Brodski Appeal in its next report.

**Insurance Coverage in Respect of Brodski Complaint**

3.14 Both before and after approval and implementation of the Plan, the Arctic Glacier Parties took steps to ensure that the insurance coverage then in place was maintained for the protection of the Arctic Glacier Parties in the event that a claim (such as the Brodski Complaint) was advanced. Following the filing of the Brodski Complaint, notice was delivered to the Arctic Glacier Parties’ insurer, which notice has been acknowledged.

Coverage has been confirmed, subject to all terms and conditions of the insurance policy, including payment by the Arctic Glacier Parties of the Retention (deductible) amount and the insurer's reservation of rights.

#### **4.0 POST-PLAN IMPLEMENTATION DATE TRANSACTIONS**

- 4.1 Pursuant to the Plan, each of the Arctic Glacier Parties, or the Monitor on their behalf, as the case may be, were to take certain steps, as described in the Twenty-Third Report after the Plan Implementation Date.
- 4.2 Included among these steps, each of the Arctic Glacier Parties, in consultation with the Monitor, was to take all steps necessary to merge, wind-up, liquidate, terminate, and/or dissolve or undertake any other steps in connection therewith, including causing AGIF's Trust Units to cease to be listed and traded on the Canadian Securities Exchange on (and for greater certainty, not prior to) the Final Distribution Date; and the Monitor, on behalf of the Arctic Glacier Parties, was to make any distributions, payments or transfers in connection therewith (the "**Post-Plan Implementation Date Transactions**").
- 4.3 In order to facilitate the satisfaction of Proven Claims and the distribution that was made to the Unitholders, Schedule "B" to the Plan lists a series of specific steps which include steps, assumptions, distributions, transfers, payments, contributions, reductions of capital, settlements and releases of various of the Arctic Glacier Parties (the "**Schedule B Steps**") that are deemed to occur in the order and as provided for in the Plan.
- 4.4 Since the Plan Implementation Date, the Arctic Glacier Parties and their legal counsel, with the assistance of the Monitor, have been working to complete the Post-Plan Implementation Date Transactions and the Schedule B Steps and continue to do so. The

Post-Plan Implementation Date Transactions and Schedule B Steps must be completed in a specific order, thereby requiring ongoing actions to be taken by the Arctic Glacier Parties and their legal counsel, with the assistance of the Monitor.

4.5 The documents necessary to dissolve 22 of the 28 subsidiaries of AGII have been completed and filed. The tax returns for the U.S. Arctic Glacier Parties for the 2015 year-end have also been filed to continue the dissolution process for these companies. In certain cases, additional documentation will need to be completed and filed to effect the dissolutions.

4.6 The states in which the remaining 6 AGII subsidiaries are incorporated require that the respective final tax returns be filed prior to filing the documents necessary to dissolve those companies. The taxes for these companies are reported as part of a consolidated AGII tax return and could not be filed separately to commence the dissolution process. As the consolidated AGII tax return for the 2015 year-end has now been filed, the Arctic Glacier Parties are commencing the dissolution process for these remaining 6 subsidiaries.

4.7 The Monitor will provide further updates in respect of the Post-Plan Implementation Date Transactions and the Schedule B Steps in subsequent reports.

## **5.0 THE U.S. SALES TAX ISSUE**

5.1 In accordance with the U.S. Plan Implementation Order, the Monitor, in its capacity as foreign representative of the Arctic Glacier Parties, contacted the Taxing Authorities for the purpose of resolving the U.S. Sales Tax Issue.

- 5.2 As at the date of the Twenty-Third Report, there were nine remaining Taxing Authorities who had been sent a calculation (the “**Tax Calculation**”) of the potential sales tax liability, including interest and penalties, of the Arctic Glacier Parties, if any, to the applicable Taxing Authority that was greater than nil (the “**Positive Balance Tax Calculations**”) and who had not responded to the Monitor’s notice to them in respect of same. The Positive Balance Tax Calculations for the nine remaining Taxing Authorities totaled \$11,593.
- 5.3 As reported in the Twenty-Third Report, on October 30, 2015 the Monitor contacted those parties (the “**Remaining Taxing Authorities**”) by letter (the “**Payment Letters**”) a second time. The original notices were attached to the respective Payment Letters which also included a cheque in the amount of the respective Tax Calculation for each of the Remaining Taxing Authorities. The Payment Letters indicated that, by cashing the cheque, the respective Taxing Authority would release the Identified AG Parties of any and all debts associated with the U.S. Sales Tax Issue and would accept the payment in full and final satisfaction of any and all sales tax liability, including penalties and interest, of the Identified AG Parties due and owing to the respective Taxing Authority.
- 5.4 Since the date of the Twenty-Third Report, five of the Remaining Taxing Authorities have cashed the cheques that were issued to them (totaling \$8,352). Three of the other Remaining Taxing Authorities returned the cheques that were sent to them (totaling \$388) to the Monitor with letters indicating that the respective Taxing Authority has no record of any sales tax liabilities owing by the indicated entities. In follow-up discussions with the Monitor, these three Remaining Taxing Authorities have indicated that they do not intend to cash the cheques issued to them because they do not have a record of any

sales tax liability from the entities indicated. The Monitor had multiple communications with the other Remaining Taxing Authority, which also indicated that its internal records do not reflect any sales tax liability owing by the relevant Identified AG Parties.

5.5 It is the Monitor's view that: (i) all of the obligations of the Monitor and of the Arctic Glacier Parties under the U.S. Plan Implementation Order as it relates to the U.S. Sales Tax Issue have been met (and that all necessary and appropriate efforts and steps were taken); (ii) all of the potential sales tax liabilities that formed the basis of the State Sales Tax Liability Caps that were reserved for in the Sales Tax Reserve have been resolved; (iii) the Arctic Glacier Parties have no further liabilities in respect of same; and (iv) the Sales Tax Reserve is no longer required.

5.6 At the next appropriate attendance before the U.S. Court, it is the Monitor's intention to request the U.S. Court to release and discharge the Sales Tax Reserve, which would thereby result in the remainder of the Sales Tax Reserve being available for the payment of Administrative Reserve Costs in accordance with the Plan. As the funds held by the Monitor in the estate bank accounts in respect of the Administrative Costs Reserve, after providing for the Sales Tax Reserve, will be sufficient to satisfy the estates' anticipated disbursements during the requested Stay Period, the Monitor does not believe that earlier attendance before the U.S. Court to deal with the Sales Tax Reserve is necessary.

## **6.0 THE CLAIMS PROCESS**

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

6.2 As last described in the Twenty-Third Report, the Plan provides for the establishment and administration of the Unresolved Claims Reserve. Including interest, the amount of the Unresolved Claims Reserve is currently approximately \$14.01 million, being the amount, including interest up to the Plan Implementation Date, of the McNulty Claim, which is the last remaining Unresolved Claim. The NYC Claim, which was also an Unresolved Claim as at the date of the Twenty-Second Report, has since been withdrawn and is described further below.

6.3 In accordance with the Plan, once all Unresolved Claims have been finally determined in accordance with the Claims Procedure Order and the Claims Officer Order and when all Proven Claim Amounts have been paid, any balance that remains in the Unresolved Claims Reserve will be deemed to be transferred to the Administrative Costs Reserve.

#### **The McNulty Claim**

6.4 As last reported in the Twenty-First Report dated April 27, 2015, the Monitor, on or about October 12, 2012, received a Proof of Claim from McNulty, a former employee of the Applicants, in the amount of \$13.61 million (the “**McNulty Claim**”). The McNulty Claim relates to litigation against the Applicants, Home City, Reddy Ice, Corbin, Knowlton, and Riley commenced by McNulty in 2008, pending in the Michigan Court (the “**McNulty Action**”).

6.5 In both the McNulty Action and the McNulty Claim, McNulty alleges, among other things, that the Defendants engaged in an unlawful conspiracy and enterprise with certain individuals and competing distributors of packaged ice to boycott his employment in the packaged ice industry. McNulty also alleges that the Defendants violated the Racketeer

Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., by blackballing him from finding employment in the packaged ice industry in retaliation for his cooperation with the authorities in their investigations of the industry, as well as allegedly offering McNulty bribes to stop cooperating with the government.

- 6.6 After consulting with the CPS on behalf of the Applicants, as required by the Claims Procedure Order, the Monitor issued a Notice of Disallowance with respect to the McNulty Claim on September 12, 2013. The Monitor disallowed the McNulty Claim in its entirety because the evidence available to the Monitor did not support McNulty's allegations.
- 6.7 On September 19, 2013, in accordance with the Claims Procedure Order, McNulty filed a Dispute Notice with the Monitor. On December 9, 2013, in response to a request by the Monitor, McNulty filed a revised Dispute Notice with the Monitor.
- 6.8 After exploring whether a consensual resolution could be reached, the Monitor, in consultation with the Applicants and McNulty's counsel, concluded that the dispute raised in the Dispute Notice was not settled within a satisfactory time period or in a satisfactory manner. In accordance with the Claims Officer Order, on November 22, 2013, the Monitor referred the McNulty Claim to a Claims Officer, the Honourable Jack Ground, for adjudication.

#### **Judicially Assisted Dispute Resolution**

- 6.9 The parties have sought the assistance of a neutral third party to explore settling the McNulty Claim. The parties asked the Canadian Court to provide a date for the parties to participate in a Judicially Assisted Dispute Resolution mediation session ("JADR"). The

JADR mediation occurred on April 29, 2015, in Winnipeg, with the assistance of a Judge of the Canadian Court in Winnipeg. As reported in the Twenty-Second Report, although the Arctic Glacier Parties, McNulty, the Monitor and their respective counsel attended the JADR, it did not lead to a settlement of the McNulty Claim.

#### **Appearance in Canadian Court**

6.10 Since the Dispute Notice was filed, the McNulty Claim has required the Monitor and the Arctic Glacier Parties to participate in hearings in three different venues. First, counsel for McNulty asked the Honourable Jack Ground to decline hearing the McNulty Claim and ultimately brought a motion in the Canadian Court seeking an Order (a) striking the appointment of the Honourable John D. Ground as a Claims Officer in respect of the McNulty Claim; and (b) requiring the Monitor to consult with McNulty and Arctic Glacier in determining an appropriate process for resolving the McNulty Claim (the “**McNulty Motion**”). The Canadian Court heard the McNulty Motion on November 25, 2014. On November 26, 2014, the Canadian Court dismissed the McNulty Motion. A transcript of the Canadian Court’s decision is available on the Website and was included as Appendix “E” to the Monitor’s Twenty-First Report.

#### **Appearance in Michigan Court**

6.11 Second, McNulty filed in the Michigan Court: (i) a Motion to Sever for an order permitting him to conduct discovery and proceed against the Non-Bankrupt Defendants; and (ii) a Sealed Motion to Amend for, among other things, leave to amend his complaint in the McNulty Action to revive claims against Corbin and Knowlton (the “**Corbin/Knowlton Claims**”) that were previously dismissed by the Michigan Court. For

the reasons described in more detail in paragraphs 4.2 to 4.6 of the Twenty-First Report, the Monitor held the view that McNulty's filing of the McNulty Michigan Motions violated the Plan, the Sanction Order, and the Recognition Order. The Arctic Glacier Parties opposed the McNulty Michigan Motions on a similar basis. The Arctic Glacier Parties also sought to dismiss the Corbin/Knowlton Claims (to the extent not already dismissed) as such claims were released under the Plan and to dismiss the claims against the Arctic Glacier Parties as such claims are being addressed through the Claims Procedure (the "**Arctic Michigan Motions**").

- 6.12 The McNulty and Arctic Michigan Motions were heard by the Michigan Court on December 9, 2015.
- 6.13 On February 8, 2016, the Michigan Court dismissed the McNulty Michigan Motions and granted the Arctic Michigan Motions. A copy of the Opinion and Order (i) Granting Arctic Glacier and Charles Knowlton's Motion to Dismiss (ECF No. 256); (ii) Denying Plaintiff's Motion to Amend Complaint (ECF No. 250); and (iii) Denying as Moot (a) Plaintiff's Motion to Sever Bankrupt Defendants (ECF No. 249) and (b) Plaintiff's Motion to Exclude Testimony of Monitor (ECF No. 276) is attached to this Twenty-Fourth Report as **Appendix "D"**.
- 6.14 As a result of this Order and prior Orders dismissing certain of McNulty's claims, the only claim remaining before the Michigan Court was McNulty's Claim against Home City. Home City brought a motion for summary judgment in respect of McNulty's claims which was granted by the Michigan Court in its opinion and order issued on August 17, 2016 (the "**Michigan Court Decision**"). The Michigan Court Decision,

which is attached as **Appendix “E”**, dismissed McNulty’s claim filed in the Michigan Court.

**Appearances Before Claims Officer Ground**

6.15 Third, the Arctic Glacier Parties, McNulty and the Monitor have engaged in multiple appearances in writing, by telephone and in person before Claims Officer Ground to address procedural issues. A summary of the Orders made by Claims Officer Ground in respect of the McNulty Claim is set out below:

- a) February 12, 2015: Claims Officer Ground released his first Order related to the timetable and procedure to be used in the Claims Adjudication Process;
- b) March 27, 2015: Claims Officer Ground ordered that the McNulty Claim would be adjudicated in two phases. If the Arctic Glacier Parties succeed on all issues in Phase 1, then the McNulty Claim will have been fully adjudicated, subject to any appeals. If the Arctic Glacier Parties do not succeed on all issues in Phase 1, then the Claims Adjudication will proceed to Phase 2. Phase 1 will focus solely on causation and, in particular, will resolve the following questions:
  - i. Assuming that the defendants McNulty originally sued (Arctic Glacier, Reddy Ice, Home City Ice, Joseph Riley, Keith Corbin, and Charles Knowlton) entered into a conspiracy to blackball him from employment in the packaged ice industry, can McNulty prove that his claimed injuries were caused by the alleged conspiracy?

- ii. After February 2005, assuming that Arctic Glacier offered to rehire McNulty and pay him a bonus on condition that he agree to stop working with the authorities or that he participate in market allocation, and did that condition cause him to be unable to accept Arctic Glacier's offer of employment?
  - iii. Did McNulty have a reasonable expectation of employment from a packaged ice company? If so, assuming that Arctic Glacier was aware of that expectancy, did Arctic Glacier take any step resulting in that expectation not being realized?
- c) April 27, 2015: Claims Officer Ground granted McNulty's motion for leave to amend his Claim by adding an antitrust claim. The order permitting the amended Complaint was made on May 6, 2015;
  - d) June 1, 2015: After hearing submissions of the parties, Claims Officer Ground amended the Timetable Order to resolve certain disputes about the scope of discovery;
  - e) August 31, 2015: After hearing submissions of the parties, Claims Officer Ground clarified each party's entitlement to serve further interrogatories, the timing of such service, and the approach to searching for documents;
  - f) February 19, 2016: On consent of the parties, Claims Officer Ground ordered that the Implied Undertaking Rule applies to all documents produced in the Claims Adjudication;

- g) May 9, 2016: Claims Officer Ground restated the Timetable Order. A copy of the May 9, 2016, Timetable Order is attached to this Twenty-Fourth Report as **Appendix “F”**;
- h) June 6, 2016: Claims Officer Ground ordered the parties to appear in Toronto for a hearing to resolve any issues outstanding related to the discovery process; and
- i) June 27, 2016: Claims Officer Ground made orders resolving the outstanding issues related to the discovery process as well as certain issues related to the evidence to be used to adjudicate Phase 1 of the McNulty Claim.

6.16 A telephonic case conference is scheduled to occur before Claims Officer Ground on September 16, 2016, to discuss and resolve any outstanding issues related to the steps outlined in the May 9, 2016, Timetable Order. The Timetable Order contemplates that Claims Officer Ground will receive all of the materials in respect of Phase 1 by December 3, 2016. The period of time Claims Officer Ground will require to consider the materials filed and release his decision is uncertain.

#### **The City of New York Claim**

6.17 As last described in the Twenty-Third Report, the Claim submitted by the City of New York (the “**NYC Claim**”) was for \$218,025 and was comprised of:

- general corporate taxes of \$60,750 in respect of the Applicant, Diamond Ice Cube Company Inc. (“**Diamond Ice**”); commercial rent tax of \$135,000 in respect of the Applicant, Arctic Glacier New York Inc.; and commercial motor vehicle tax

of \$1,620 in respect of Arctic Glacier Losquadro Inc., a predecessor company to the Applicant, Arctic Glacier New York Inc., all for the period January 1, 2008 to February 22, 2012;

- general corporate taxes of \$20,250 in respect of the Applicant, AGII for the period January 1 to February 22, 2012; and
- commercial motor vehicle taxes of \$405 in respect of Diamond Ice for the period June 1 to 20, 2009.

6.18 The City of New York, the Arctic Glacier Parties and the Monitor entered into a settlement agreement dated January 25, 2016 to fully and finally resolve the NYC Claim (the “**NYC Settlement Agreement**”).

6.19 The NYC Settlement Agreement provides, among other things, that the Monitor shall accept the NYC Claim in the aggregate amount of \$2,025 and that the City of New York shall have a Distribution Claim of \$2,093 (the “**NYC Distribution Claim**”). In accordance with the NYC Settlement Agreement, the NYC Distribution Claim has been paid by the Monitor on behalf of the Arctic Glacier Parties. The NYC Settlement Agreement provides that upon payment of the NYC Distribution Claim, the NYC Claim is deemed withdrawn and the City of New York will take no further action upon that Claim.

## **7.0 RECEIPTS AND DISBURSEMENTS SINCE THE TWENTY-THIRD REPORT**

7.1 During the period from November 1, 2015 to August 12, 2016 (the “**Reporting Period**”), the Applicants had Canadian dollar net cash flows of approximately \$283,000 and U.S. dollar net cash outflows of approximately \$2.66 million.

7.2 Excluding transfers between the Monitor’s U.S. and Canadian dollar trust bank accounts, receipts during the Reporting Period were approximately CAD\$38,000 and \$49,700 and consisted of tax and insurance refunds and deposit interest.

7.3 Disbursements, also excluding transfers between the Monitor’s U.S. and Canadian dollar trust bank accounts, consisted primarily of U.S. dollar professional fees and expenses totaling approximately \$1.1 million and Canadian dollar professional fees and expenses of approximately CAD\$1.4 million, which collectively include fees and expenses paid to the Monitor, its legal counsel, the CPS, the Applicants’ legal counsel, the Applicants’ tax consultants, and other professionals involved with these CCAA Proceedings. In addition, disbursements include a remittance in the amount of CDN\$53,555 to CRA for source deductions, including interest and penalties in respect of certain payments made by the Monitor to a Trustee that the Trustee intends to dispute with CRA; the penalties and interest may be refunded to the estate if the Trustee succeeds in his dispute with CRA. Also included in disbursements are other expenses comprised of income taxes, payments to Taxing Authorities in respect of the U.S. Sales Tax Issue, fees paid to Directors and Trustees, certain settled Claim amounts, and disbursements of an administrative nature totaling approximately \$158,400 and CAD\$360,000.

- 7.4 As at August 12, 2016, the Monitor is holding approximately \$20.9 million and CAD\$544,000, all of which is being held in interest-bearing accounts in the name of the Monitor, on behalf of the Applicants.
- 7.5 As discussed in Paragraph 3.14 of this Twenty-Fourth Report, the Arctic Glacier Parties' insurer has confirmed coverage of the Brodski Complaint, subject to all terms and conditions of the insurance policy, including payment by the Arctic Glacier Parties of the Retention (deductible) amount and the insurer's reservation of rights.
- 7.6 The Plan provides that certain reserves and cash pools be maintained in respect of the remaining obligations of the estates. The funds held by the Monitor on behalf of the Applicants as at August 12, 2016, are divided among the reserves and cash pools as follows: Unresolved Claims Reserve, approximately \$14.01 million; Insurance Reserve, approximately \$721,000; and Administrative Costs Reserve, approximately \$6.2 million, and CAD\$544,000.

## **8.0 THE STAY EXTENSION**

- 8.1 Pursuant to the Initial Order and subsequent Orders of the Canadian Court, the Stay Period was granted and extended until September 30, 2016. The Monitor requests an extension of the Stay Period to April 21, 2017.
- 8.2 The Monitor believes that an extension of the Stay Period until April 21, 2017 is appropriate, as it will allow additional time for the Monitor, in consultation with the Applicants, to, among other things continue:

- a) implementing the steps contemplated by the Plan;

- b) working towards a resolution of the McNulty Claim, the last remaining Unresolved Claim; and
- c) working towards a resolution of the Brodski Proceeding.

8.3 The Monitor believes that the Arctic Glacier Parties have acted and continue to act in good faith and with due diligence in advancing the administration of these CCAA Proceedings.

## **9.0 ACTIVITIES OF THE MONITOR**

9.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Twenty-Third Report, being November 9, 2015, have included the following:

- continuing to work through the ongoing Post-Plan Implementation Date Transactions, including the merger, wind-up, liquidation, termination and/or dissolution of the Arctic Glacier Parties in accordance with the Plan;
- responding to inquiries from Unitholders and other stakeholders;
- continuing to make non-confidential materials filed with the Canadian Court and with the U.S. Court publicly available on the Website;
- preparing this Twenty-Fourth Report;
- continuing to act as foreign representative in the Chapter 15 Proceedings;
- continuing to fulfill the Monitor's responsibilities pursuant to the Claims Procedure Order and the Claims Officer Order;

- communicating with insurance adjusters and with various plaintiffs' counsel regarding certain open insurance claims;
- attending the November Stay Extension Motion;
- attending the McNulty Michigan Motions and the Arctic Michigan Motions;
- arranging for the preparation and filing of extension requests in respect of the U.S. tax returns for the year ended December 31, 2015;
- arranging for the preparation and filing of the tax returns for the year ended December 31, 2015 for the Arctic Glacier Parties;
- preparing and filing various statutory returns in respect of deductions at source withheld, as required, from distributions made during 2015 to certain former employees and to the Directors/Trustees in respect of their Claims, as well as in respect of certain of the amounts distributed, as appropriate;
- maintaining estate bank accounts, overseeing the 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
- preparing and filing monthly GST/HST returns and various other statutory returns and communicating with CRA and certain government bodies in the United States, as appropriate in respect of same.

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All of which is respectfully submitted to the Court of Queen's Bench this 30<sup>th</sup> day of August, 2016.

**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".**



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Per: Alan J. Hutchens, Senior Vice-President