

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO ARCTIC GLACIER INCOME FUND,
ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL INC. and the
ADDITIONAL APPLICANTS LISTED ON SCHEDULE "A" HERETO

(collectively, the "APPLICANTS")

APPLICATION UNDER THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

TWENTY-EIGHTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.
March 6, 2019

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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-seven reports with the Canadian Court. Capitalized terms used but not otherwise defined in this report (the "**Twenty-Eighth 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 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 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.
- 1.6 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.
- 1.7 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**").

1.8 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**").

1.9 On September 18, 2018, the Canadian Court issued an order (the “**Stay Extension Order**”) extending the Stay Period to March 22, 2019.

1.10 The purpose of this Twenty-Eighth Report is to:

a) provide the Canadian Court, the U.S. Court, Affected Creditors, Unitholders and other interested parties with an update regarding:

- i. the Unitholder Claims Process;
- ii. post-Plan implementation steps to be completed by the Arctic Glacier Parties and the Monitor;
- iii. the Arctic Glacier Parties’ receipts and disbursements for the period from September 8, 2018 to February 23, 2019;
- iv. the Monitor’s activities since the date of the Twenty-Seventh Report (September 11, 2018); and

b) provide information in support of the Monitor’s motion returnable March 12, 2019 for an order, among other things:

- i. extending the Stay Period to June 21, 2019; and
- ii. approving this Twenty-Eighth Report.

1.11 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-Eighth 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-Eighth 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-Eighth 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 3.1 of the Twenty-Fifth Report:

- a) Certain persons contacted AGIF and/or the Monitor shortly after the Plan Implementation Date to assert that they were entitled to but did not receive a portion of the Initial Distribution.
- b) 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**”).
- c) On June 2, 2015, the Canadian Court issued an order approving the Unitholder Claims Process 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. All claims were withdrawn except for those asserted by the Brodski Parties.
- d) On July 8, 2015, the U.S. Court recognized the Unitholder Claims Procedure Order (the “**U.S. Unitholder Claims Procedure Recognition Order**”), which enumerated several steps, culminating in the Brodski Parties commencing an adversary proceeding (the “**Brodski Proceeding**”) by filing a complaint on October 30, 2015 in the U.S. Court (the “**Brodski Complaint**”). The Brodski Parties asserted Initial Distribution Claims and O&T Claims, both in the amount of \$1,966,568.18, plus reasonable attorney’s fees and costs, prejudgment interest, punitive damages, and treble damages, which have not been quantified (the “**Brodski Claims**”). The Brodski Parties named AGIF as well as the individual Trustees of AGIF as defendants in the Brodski Complaint.

- e) 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**”). On April 19, 2016, the U.S. Court heard oral arguments.
- f) On July 13, 2016, the U.S. Court issued a Memorandum Opinion addressing the Motion to Dismiss and granting the Motion to Dismiss in its entirety (the “**Dismissal Order**”).
- g) The Brodski Parties filed a Notice of Appeal on July 20, 2016 to appeal the Dismissal Order (the “**Brodski Appeal**”).

3.2 As described in paragraphs 3.2 to 3.6 of the Twenty-Sixth Report:

- a) The parties fully briefed the Appeal. At the time of the Twenty-Fifth Report, the District Court for the District of Delaware (the “**District Court**”) had the appeal under reserve.
- b) On June 14, 2017, the District Court released its Memorandum Opinion in the matter. The District Court affirmed the U.S. Court’s Dismissal Order.
- c) On July 12, 2017, the Brodski Parties filed a Notice of Appeal with the United States Court of Appeals for the Third Circuit (the “**Third Circuit Court**”). That Appeal was fully briefed.

3.3 As described in paragraphs 3.3 to 3.4 of the Twenty-Seventh Report

- a) The Third Circuit Court required the Parties to attend oral argument on March 22, 2018.

b) On August 20, 2018, the Third Circuit Court released its unanimous decision, in which it affirmed the decision of the District Court.

3.4 Since the date of the Twenty-Seventh Report, the period within which the Brodski Parties could start an appeal has expired without any steps having been taken. This Unitholder Claim is now fully addressed. No Unitholder Claims remain.

4.0 **POST-PLAN IMPLEMENTATION DATE TRANSACTIONS**

4.1 As discussed in the Twenty-Fifth 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 certain steps after the Plan Implementation Date (the “**Post-Plan Implementation Date Transactions**”), including the completion of a series of specific steps, assumptions, distributions, transfers, payments, contributions, reductions of capital, settlements and releases of various of the Arctic Glacier Parties listed in Schedule “B” to the Plan (the “**Schedule B Steps**”).

4.2 As of the date of this Twenty-Eighth Report, 27 of the 28 subsidiaries of AGII have been dissolved and all tax filings completed. The remaining subsidiary, Arctic Glacier Newburgh Inc. (“**Newburgh**”) is incorporated in the State of New York (the “**State**”) and, as described in the Twenty-Seventh Report, the Monitor has requested a Consent to Dissolution in respect of Newburgh.

4.3 Since the date of the Twenty-Seventh Report the Monitor received a notice from the State requesting a return from the 2006 tax year before the State would consent to the requested dissolution. The Monitor has provided the requested return to the State. On

March 4, 2019 the State advised that, within 10 to 15 days thereafter, the Monitor should receive the Consent to Dissolution which the Monitor will then need to file, together with the requisite form and fee, with the State following which Newburgh should be dissolved.

- 4.4 Once Newburgh is dissolved, the Monitor can begin implementing the next Schedule B steps (Steps 12, 13, 14, 15 16 and 17), which will culminate in the dissolution of AGII. The Monitor does not expect that these steps will take much time. Once AGII is dissolved, all Arctic Glacier Parties resident in the US will have been dissolved.
- 4.5 With respect to the remaining Canadian entities – AGI and AGIF – since the Twenty-Seventh Report, the Monitor received notification from CRA of a tax audit in respect of AGI for the 2015 tax year. All information requested by CRA in the course of that audit has been provided to the CRA by the Monitor. The CRA has advised that it is reviewing the information provided and will advise as to the next steps during the week of March 18, 2019.
- 4.6 It is the Monitor’s intention to complete the Post-Plan Implementation Date Transactions and Schedule B Steps as quickly as possible to be in a position to make a Final Distribution once all such transactions and steps are completed. Remaining matters to be completed include: the wind-up of AGII and AGI, the completion of the current CRA audit, and obtaining a comfort letter or clearance certificate from CRA. The Monitor is actively working on all tasks necessary to complete the remaining steps to avoid any delay that is within the Monitor’s control.

4.7 The Monitor will provide further updates in respect of the Post-Plan Implementation Date Transactions and the Schedule B Steps in its next report at which time it is hopeful that it will be able to provide details in respect of the Final Distribution, including the relevant dates and timelines.

5.0 RECEIPTS AND DISBURSEMENTS SINCE THE TWENTY-SEVENTH REPORT

5.1 During the period from September 8, 2018 to February 23, 2019 (the “**Reporting Period**”), the Applicants had Canadian dollar net cash inflows of approximately \$26,600 and U.S. dollar net cash outflows of approximately \$139,500.

5.2 Excluding transfers between the Monitor’s U.S. and Canadian dollar trust bank accounts, receipts during the Reporting Period were approximately CAD\$750 and \$188,000 comprised entirely of deposit interest.

5.3 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 \$41,000 and Canadian dollar professional fees and expenses of approximately CAD\$202,000 (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). Also included in disbursements are other expenses comprised of fees paid to Directors and Trustees and disbursements of an administrative nature totaling a net amount of approximately \$36,300 and CAD\$97,600.

5.4 As at February 23, 2019, the Monitor is holding approximately \$18.81 million and CAD\$97,600, all of which is being held in interest-bearing accounts in the name of the Monitor, on behalf of the Applicants.

5.5 The Plan provides that certain reserves and cash pools be maintained in respect of the remaining obligations of the estates. As discussed in the Twenty-Seventh Report, all remaining funds held by the Monitor on behalf of the Companies are part of the Administrative Costs Reserve.

6.0 THE STAY EXTENSION

6.1 Pursuant to the Initial Order and subsequent Orders of the Canadian Court, the Stay Period was granted and extended until March 22, 2019. The Monitor requests an extension of the Stay Period to June 21, 2019.

6.2 The Monitor believes that an extension of the Stay Period until June 21, 2019 is appropriate, as it will allow the Monitor, in consultation with the Applicants, to among other things, continue implementing the steps contemplated by the Plan.

6.3 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.

7.0 ACTIVITIES OF THE MONITOR

7.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Twenty-Seventh Report, being September 11, 2018, have included the following:

- 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-Eighth 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;
- attending the September 2018 Stay Extension Motion;
- 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;
- preparing financial statements for the year ended December 31, 2018 in respect of the remaining Arctic Glacier Parties and arranging for the preparation of the 2018 tax returns; and

- preparing and filing 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.

All of which is respectfully submitted to the Court of Queen's Bench this 6th day of March, 2019.

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



Per: Alan J. Hutchens, Senior Vice-President

Appendix “A”

List of Applicants

Arctic Glacier California Inc.
Arctic Glacier Grayling Inc.
Arctic Glacier Lansing Inc.
Arctic Glacier Michigan Inc.
Arctic Glacier Minnesota Inc.
Arctic Glacier Nebraska Inc.
Arctic Glacier Newburgh Inc.
Arctic Glacier New York Inc.
Arctic Glacier Oregon Inc.
Arctic Glacier Party Time Inc.
Arctic Glacier Pennsylvania Inc.
Arctic Glacier Rochester Inc.
Arctic Glacier Services Inc.
Arctic Glacier Texas Inc.
Arctic Glacier Vernon Inc.
Arctic Glacier Wisconsin Inc.
Diamond Ice Cube Company Inc.
Diamond Newport Corporation
Glacier Ice Company, Inc.
Ice Perfection Systems Inc.
ICESurance Inc.
Jack Frost Ice Service, Inc.
Knowlton Enterprises, Inc.
Mountain Water Ice Company
R&K Trucking, Inc.
Winkler Lucas Ice and Fuel Company
Wonderland Ice, Inc.