

Court File No. CV-20-00645116-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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 OF 2800741 ONTARIO INC.

Applicant

FACTUM OF THE APPLICANTS

(Re: Motion Returnable June 28, 2021)

June 25, 2021

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TO: SERVICE LIST

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PART I – OVERVIEW

1. 2800741 Ontario Inc. (“**Newco**” and the “**Applicant**”) brings this motion for an Order, substantially in the form attached at **Tab 3** of the Motion Record, that, among other things:
 - (a) Extends the stay of proceedings until June 30, 2022; and
 - (b) If necessary, grants such further and other relief as this Honorable Court deems just.
2. The current stay period (the “**Stay Period**”) expires on June 30, 2021.
3. This CCAA proceeding was formerly titled “In the Matter of the Compromise or Arrangement of TribalScale Inc.” On January 11, 2021, the Honorable Justice Cavanagh granted an Order (the “**Sanction Order**”) that, among other things,
 - (a) sanctioned TribalScale Inc.’s plan of arrangement dated January 4, 2021 (the “**Plan**”);
 - (b) added Newco as an Applicant to the within proceeding;
 - (c) transferred all of TribalScale Inc.’s unsecured liabilities to Newco; and
 - (d) transferred all of TribalScale Inc.’s rights under a software development contract (the “**SiriusXM Contract**”) between itself and SiriusXM Vehicle Connected Services Inc. (“**SiriusXM**”) to Newco.¹
4. On January 27, 2021, the Plan was implemented. On January 28, 2021, TribalScale Inc. was discharged from CCAA protection – leaving Newco as the sole Applicant.²

¹ Affidavit of Sheetal Jaitley, affirmed on June 23, 2021 at Record, Tab 2, page 13 at para 3 [*Jaitley Affidavit*].

² *Jaitley Affidavit* at Record, Tab 2, page 14 at para 6.

5. Newco's exclusive business is the pursuit of a US\$504,182.77 (plus interest) receivable owed to it by SiriusXM (the "**SiriusXM Receivable**"), for the sole benefit of Newco's unsecured creditors (less the costs incurred to collect).³ The SiriusXM Receivable is the sum of three unpaid invoices issued under the SiriusXM Contract.

6. Newco had hoped to reach a consensual resolution of the SiriusXM Receivable issue but settlement talks have broken down.⁴ Newco must therefore commence litigation.⁵

7. The SiriusXM Contract is governed by Texas law. Newco will be pursuing the litigation in Texas.⁶

8. Newco's costs related to the litigation (which are its only expenses) are funded entirely by TribalScale Inc., pursuant to a litigation funding agreement (the "**LFA**") approved by the Honourable Justice Dietrich on January 28, 2021.⁷

9. The SiriusXM litigation is expected to last for over a year, or in any event much longer than the current Stay Period expiry date of June 30, 2021.⁸

10. Newco proposes to extend the Stay Period for one year until June 30, 2022. This stay extension is appropriate in the circumstances because:

- (a) Newco must remain under CCAA protection to facilitate a claims process once the SiriusXM Receivable is collected;⁹

³ *Jaitley Affidavit* at Record, Tab 2, pages 13-14 at paras 3-4.

⁴ *Jaitley Affidavit* at Record, Tab 2, page 15 at para 9.

⁵ *Jaitley Affidavit* at Record, Tab 2, page 15 at para 9.

⁶ *Jaitley Affidavit* at Record, Tab 2, page 15 at para 11.

⁷ *Jaitley Affidavit* at Record, Tab 2, page 14 at paras 6, 13.

⁸ *Jaitley Affidavit* at Record, Tab 2, page 15 at paras 9, 11.

⁹ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 15.

- (b) Remaining in CCAA protection without a stay unnecessarily creates unknown risk;¹⁰
- (c) A shorter stay extension will create unnecessary professionals' fees because Newco does not expect to otherwise need to return before this Honourable Court over the next year (unless the SiriusXM Receivable is collected);¹¹
- (d) Converting this CCAA into a bankruptcy would also unnecessarily create administrative expense;¹²
- (e) Pursuant to the LFA, the Monitor will supervise Newco's conduct in the SiriusXM litigation;¹³
- (f) The LFA ensures that Newco will have sufficient liquidity to operate through the proposed Stay Period;¹⁴
- (g) No creditors are expected to suffer material prejudice because of the stay extension;¹⁵ and
- (h) The Monitor supports the proposed stay extension.¹⁶

11. Newco's conduct to date (described below) illustrates that it has acted in good faith and with due diligence. Its evidence on this motion is that it will continue to do so.¹⁷

12. As such, Newco submits that the Order in the form attached as **Tab 3** to the Motion Record should be granted.

¹⁰ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 15.

¹¹ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 16.

¹² *Jaitley Affidavit* at Record, Tab 2, page 16 at para 16.

¹³ *Jaitley Affidavit* at Record, Tab 2, page 20, Exhibit "A" at s 6.1.

¹⁴ *Jaitley Affidavit* at Record, Tab 2, page 15 at para 14.

¹⁵ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 15.

¹⁶ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 15.

¹⁷ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 17.

PART II – FACTS

A. Background

13. Newco is a wholly owned subsidiary of TribalScale Inc. incorporated for the purposes of effecting a reverse vesting transaction to allow TribalScale to exit restructuring proceedings and operate in the ordinary course.¹⁸

14. TribalScale Inc. is a software engineering and development firm that provides digital product strategy, design, and development services to clients located in Canada and in the United States.¹⁹ TribalScale Inc. specializes in creating enterprise software solutions for large, institutional clients, and has been retained for several high-profile projects.²⁰

15. Additional background facts can be found in the Jaitley Affidavit and the Fifth Monitor's Report, as well as materials filed in CaseLines under the January 28 motion "bundle".

B. Events Following the Last Stay Extension

16. On January 28, 2021, following sanction of the Plan – which was approved by 100% in number and value of TribalScale Inc.'s secured creditors – and the Sanction Order, the Honourable Justice Dietrich granted an Order, among other things:

- (a) Extending the stay period until June 30, 2021 (the "**Stay Period**");
- (b) Approving the LFA; and

¹⁸ *Jaitley Affidavit* at Record, Tab 2, pages 12-14 at paras 1, 3, 7.

¹⁹ *Jaitley Affidavit* at Record, Tab 2, page 12 at para 2.

²⁰ *Jaitley Affidavit* at Record, Tab 2, page 12 at para 2.

- (c) Discharging TribalScale Inc. from these CCAA proceedings from and after the date of the order.

17. Following January 28, 2021:

- (a) TribalScale Inc. began operating as a going concern outside of CCAA protection;²¹
- (b) Pursuant to the LFA, the Monitor solicited interest in and constituted a Creditors' Committee (as defined in the LFA) to "review and approve any matter or step in respect of" the litigation against SiriusXM;²²
- (c) Newco's Canadian counsel and SiriusXM's Canadian counsel engaged in settlement negotiations;²³
- (d) The Creditors' Committee held multiple meetings;²⁴
- (e) SiriusXM's American counsel issued a "Petition" for jurisdiction in Texas (service of which was not accepted by Newco's Canadian counsel);²⁵ and
- (f) Newco retained Texan counsel.²⁶

²¹ *Jaitley Affidavit* at Record, Tab 2, page 14, at para 7.

²² *Jaitley Affidavit* at Record, Tab 2, page 14, at para 8.

²³ *Jaitley Affidavit* at Record, Tab 2, page 14, at para 8.

²⁴ *Jaitley Affidavit* at Record, Tab 2, page 14, at para 8.

²⁵ *Jaitley Affidavit* at Record, Tab 2, page 14, at para 8.

²⁶ *Jaitley Affidavit* at Record, Tab 2, page 14, at para 8.

PART III – LAW & ARGUMENT

A. Extension of the Stay Period

18. The Applicant is seeking an extension of the Stay Period up to and including June 30, 2022.

19. Under section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.²⁷

The Proposed Stay Extension is Appropriate

20. The requested stay extension is appropriate for the reasons described at paragraph 10 above.

21. Moreover, there is applicable precedent for a long stay extension: *Re Arctic Glacier Income Fund, et al.* In *Re Arctic Glacier*, the Manitoba Court of Queen’s Bench granted an 11-month stay extension at the request of the CCAA monitor (Alvarez & Marsal).²⁸ While no reasons for decision are available, the relevant monitor’s report illustrates that final steps in that CCAA proceeding were expected to take approximately seven months and did not require a return to court; as such, the monitor submitted that the requested stay extension permitted the final steps to be completed and avoided “...the risk of an unnecessary court appearance due to unforeseen delays...”.²⁹

22. Newco respectfully submits that the same rationale applies here: the remaining steps in this CCAA proceeding are expected to take over one year to complete but Newco does not expect to

²⁷ *Companies Creditors Arrangement Act*, RSC 1985, c C-36 at s 11.02(3) [CCAA].

²⁸ Order of the Honourable Mr. Justice Kroft, *Re Arctic Glacier*, dated December 16, 2020, Tab “A”.

²⁹ Thirty-Third Report of the Monitor, Alvarez & Marsal Canada Inc, *Re Arctic Glacier*, dated December 10, 2020, section 4, page 10 Tab “B”.

require judicial assistance from this Court during that time. As such, the proposed stay extension avoids unnecessary court appearances and is therefore appropriate for that reason and for the reasons described at paragraph 10 above.

The Applicant is Acting in Good Faith and with Due Diligence

23. The Applicant's actions to date – described above – illustrate that that it is acting in good faith and with due diligence. The Applicant's evidence on this motion is that it will continue to act in good faith and due diligence during the proposed extended Stay Period.³⁰

PART IV – RELIEF REQUESTED

24. Based on the foregoing, the Applicant respectfully requests that this Court grant the proposed form of Order found at **Tab 3** of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25th DAY OF JUNE,
2021**



WEISZ FELL KOUR LLP

³⁰ *Jaitley Affidavit* at Record, Tab 2, page 16 at para 17.

SCHEDULE "A"

List of Authorities

Case Law

- a) Order of the Honourable Mr. Justice Kroft, in *Re Arctic Glacier*, dated December 16, 2020;
- b) Thirty-Third Report of the Monitor, Alvarez & Marsal Canada Inc, in *Re Arctic Glacier*, dated December 10, 2020.

SCHEDULE "B"

Statutory Authorities

Companies Creditors Arrangement Act, RSC 1985, c C-36

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

TAB A

329

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 IN SCHEDULE "A" HERETO

(collectively, the "APPLICANTS")

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

TRUE COPY

FILED
QUEEN'S BENCH

ORDER
(Stay Extension)

JAN 08 2021

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THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE MR.)	WEDNESDAY, THE 16th DAY
)	
JUSTICE KROFT)	OF DECEMBER, 2020

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 IN SCHEDULE "A" HERETO

TRUE COPY

(collectively, the "APPLICANTS")

ORDER

THIS MOTION made by Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**") for an Order, *inter alia* (i); extending the Stay Period as defined in paragraph 30 of the Order of the Honourable Madam Justice Spivak made February 22, 2012 until November 15, 2021; and (ii) approving the Thirty-Third Report of the Monitor dated December 10, 2020 (the "**Thirty-Third Report**"), and the Monitor's activities as described therein was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba.

ON READING the Notice of Motion and the Thirty-Third Report, and on hearing the submissions of counsel for the Monitor, counsel for the Applicants and Glacier Valley Ice Company, L.P. (together, the "**Arctic Glacier Parties**"), counsel for

the Trustees of Arctic Glacier Income Fund, the Chief Process Supervisor and Eldar Brodski in his personal capacity, no one appearing for any other party although duly served as appears from the Affidavit of Service affirmed December 14, 2020, filed and counsel for the Monitor undertaking to file a Supplementary Affidavit of Service:

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended to November 15, 2021.

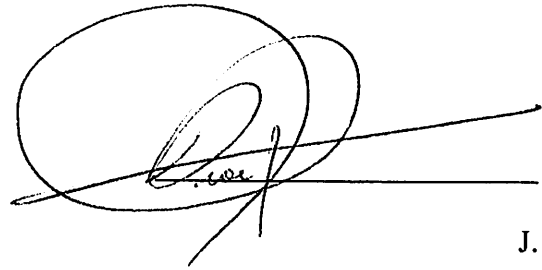
MONITOR'S ACTIVITIES AND REPORTS

3. **THIS COURT ORDERS** that the Thirty-Third Report and the activities described therein are hereby approved.

GENERAL PROVISIONS

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, including the United States Bankruptcy Court for the district of Delaware, or in any other foreign jurisdiction, to give effect to this Order and to assist the Arctic Glacier Parties, the Monitor and their respective agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Arctic Glacier Parties and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Arctic Glacier Parties and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a series of loops and a long horizontal stroke extending to the right. The signature is written over two horizontal lines.

J.

SCHEDULE "A"**ADDITIONAL APPLICANTS**

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

TAB B

Court File No. CI 12-01-76323

THE QUEEN'S BENCH
Winnipeg Centre

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

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

(collectively, the "APPLICANTS")

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

THIRTY-THIRD REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.
DECEMBER 10, 2020

DATE OF HEARING: WEDNESDAY, DECEMBER 16, 2020 AT 9:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE KROFT

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Appendix A – List of the Applicants

1.0 INTRODUCTION

1.1 As described below, only a very small percentage of the realized assets remain with the estate. During the course of these CCAA proceedings approximately: (i) \$USD284 million was paid to secured creditors at the time the sale transaction closed; (ii) approximately USD\$34 million has been distributed to unsecured creditors to pay their proven claims in full; and (iii) approximately USD\$54.5 million and CAD\$20 million has been distributed to Unitholders. The Monitor continues to hold approximately CAD\$3.3 million. A requirement for distributing the remaining amount to Unitholders is obtaining tax clearance certificates from the Canada Revenue Agency (“CRA”) and Revenue Quebec. As described below, it is anticipated that the taxation authorities will be in a position to complete that process in 2021.

Summary of Chronology to Plan Implementation

1.2 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.

- 1.3 The Monitor has previously filed thirty-two reports (the “**Prior Reports**”) with the Canadian Court. Capitalized terms used but not otherwise defined in this Thirty-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**”).
- 1.4 The sale transaction for substantially all of the Arctic Glacier Parties’ business and assets closed on July 27, 2012.
- 1.5 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.

- 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 Shortly before seeking the Sanction Order, the Debtors discovered U.S. sales tax issues, including the possibility that the debtors may have incurred sales tax liabilities in certain U.S. states that remained outstanding, which delayed the implementation of the Amended Plan while those issues were addressed.

Plan Implementation

- 1.9 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.

1.10 As described in certain of the Prior Reports, since the time of the Initial Distribution, a number of issues have arisen that have delayed completion of the steps required to fully implement the Plan, including but not limited to:

- a) pursuant to the June 2, 2015 order of the Canadian Court, conducting the Unitholder Claims Process to identify and determine certain potential claims relating to the Initial Distribution;
- b) addressing claims advanced by a Unitholder regarding the Initial Distribution that led to litigation in the U.S. Bankruptcy Court, an appeal to the District Court for the District of Delaware, and a subsequent appeal to the U.S. Court of Appeals of the Third Circuit, which was not finally determined until November 2018;
- c) the extended time required to obtain consent from the State of New York for the dissolution of Arctic Glacier Newburgh Inc., which was necessary to complete the dissolution of AGII, the final remaining Arctic Glacier Party resident in the United States, in June 2019, which was required to file the Final Returns (defined below); and
- d) most recently, the extended time required to resolve a sales tax ("**QST**") matter with Revenue Quebec, also a requirement for filing the Final Returns.

Unitholder Distributions

1.11 In addition to the Initial Distribution, Unitholder Interim Distributions of CAD\$15 million and CAD\$5 million were made to Unitholders in December 2019 and September 2020, such that aggregate Unitholder Interim Distributions to-date total approximately USD\$54.5 million and CAD\$20 million, which distributions are over and above the amounts paid to secured and unsecured creditors whose claims were paid in full. As described below, the Monitor continues to hold a remaining amount of approximately CAD\$3.3 million which will be distributable to Unitholders upon the filing of the Final Returns and receiving the Clearance Certificates from the CRA and Revenue Quebec.

Purpose of Report

- 1.12 The purpose of this Thirty-Third Report is to:
- a) provide the Canadian Court, Affected Creditors, Unitholders and other interested parties with an update regarding:
 - i. post-Plan implementation steps to be completed by the Arctic Glacier Parties and the Monitor;
 - ii. the Arctic Glacier Parties' receipts and disbursements for the period from June 1 to November 30, 2020; and
 - iii. the Monitor's activities since the date of the Thirty-Second Report to Court (being June 16, 2020) (the "**Thirty-Second Report**"); and

- b) provide information in support of the Monitor's motion returnable December 16, 2020 for an order, among other things:
- i. extending the Stay Period to November 15, 2021; and
 - ii. approving this Thirty-Third Report.

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**"). The Chapter 15 Proceedings were concluded in October 2019 following the dissolution of all 29 Arctic Glacier Parties resident in the United States.

2.0 TERMS OF REFERENCE

- 2.1 In preparing this Thirty-Third 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 Thirty-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.

2.4 Capitalized terms not described elsewhere have the meaning ascribed to them in the Plan.

3.0 POST-PLAN IMPLEMENTATION DATE TRANSACTIONS

3.1 As discussed in the Thirty-First Report to Court dated November 29, 2019 (the “**Thirty-First Report**”), only two legal entities remain, both of which are in Canada: AGI and AGIF. To complete the Post-Plan Implementation Date Transactions and Schedule B Steps, any remaining issues of taxation must be resolved before a Final Distribution can be completed.

3.2 As described in the Twenty-Ninth Report to Court dated June 11, 2019, the Trustees and Directors have asked the Monitor to obtain clearance certificates from CRA and Revenue Quebec in respect of both AGI and AGIF (the “**Clearance Certificates**”). To obtain the Clearance Certificates, among other things, all outstanding CRA and Revenue Quebec tax and filing obligations must be addressed.

3.3 As described in the Thirty-Second Report, there was an amount owing by AGI to Revenue Quebec for QST that the Monitor was working with KPMG, the Companies’ tax advisors, to resolve with Revenue Quebec. After numerous attempts to obtain required information from Revenue Quebec, Revenue Quebec responded to KPMG in November 2020, and confirmed the outstanding amount that needed to be paid by AGI. All amounts owed by AGI to Revenue Quebec have now been paid.

- 3.4 At that time, Revenue Quebec also advised KPMG that, notwithstanding that the Company had not conducted business in Quebec for several years, in order to obtain a Clearance Certificate from Revenue Quebec, AGI was required to file nil Quebec provincial tax returns for the 2015 to 2019 tax years. Those returns have also been filed.
- 3.5 As reported in the Thirty-Second Report, the request for the Clearance Certificates must be filed together with the Companies' final tax returns. Accordingly, the QST matter needed to be resolved prior to filing the final tax returns and the request for Clearance Certificates.
- 3.6 In the Thirty-Second Report, the Monitor advised that it had provided information to KPMG in respect of both AGI and AGIF for the period January 1 to April 30, 2020 (commonly referred to as the "**stub period**") in order to prepare and file the Companies' final tax returns, together with the request for Clearance Certificates once the Revenue Quebec QST matter had been resolved. However, given the time required to resolve that matter with Revenue Quebec, it is now less than one month before the 2020 tax year end.
- 3.7 The Monitor has been advised by KPMG that, to the extent the final tax returns for AGI and AGIF are filed during the 2020 tax year, the final unitholder distribution (the "**Final Distribution**") would be reportable in the income tax returns of Unitholders for the 2020 tax year (with the associated T3 tax forms being prepared and distributed by AGIF in February of 2021), notwithstanding that the funds would actually be distributed in 2021, following receipt of the Clearance Certificates. Further, to the extent that CRA makes any assessments during the Clearance Certificate process, it would necessitate the

preparation and filing of revised T3 tax forms to Unitholders, which could require Unitholders to amend their 2020 tax returns.

- 3.8 In order to avoid the potential additional time and cost associated with any such adjustments and to ensure that Unitholders receive the Final Distribution in the same year in which it is reportable for tax purposes, the full year 2020 tax returns, nil stub period tax returns (collectively, the “**Final Returns**”), and the request for Clearance Certificates for both AGI and AGIF are intended to be filed in January 2021.
- 3.9 Within two business days of filing the Final Returns, the Monitor will notify the Service List and post notice on the Website to confirm that the Final Returns have been filed.
- 3.10 Within two business days following receipt of the Clearance Certificates, the Monitor will notify the Service List and post notice on the Website to confirm that the Clearance Certificates have been received. The Monitor will then complete the remaining Post-Plan Implementation Date Transactions and Schedule B Steps and make the Final Distribution.
- 3.11 The only remaining Schedule B Steps are Steps 19 to 23. Steps 19 to 22 require no time to complete: these steps include setting off intercompany debts between AGI and AGIF, repaying any AGI-AGIF Payables, the return of capital by AGI to AGIF, and deeming the satisfaction of proven claims against AGIF (which have already been paid as described above). Step 23 is the Final Distribution to Unitholders.

4.0 EXTENSION OF THE STAY

- 4.1 As described above, prior to making the Final Distribution, the Monitor must obtain the Clearance Certificates. Once the Final Returns have been filed, KPMG has estimated

that the timeline for CRA and Revenue Quebec to review and respond to the request for Clearance Certificates could be in the range of four to six months. The Final Distribution will be made as soon as possible thereafter in compliance with the applicable securities laws. Accordingly, to permit this process to be completed and to avoid the risk of an unnecessary court appearance due to unforeseeable delays in Revenue Quebec's and the CRA's review of the Final Returns, the Monitor is requesting an extension of the Stay Period until November 15, 2021. This extension of the Stay Period should be sufficient to allow the Monitor, in consultation with the Applicants, to among other things, continue implementing the steps contemplated by the Plan, including arranging for the filing of the Final Returns, obtaining the Clearance Certificates, and making the Final Distribution.

4.2 Given the length of the requested Stay Period, in addition to notifying the Service List of the filing of the Final Returns, the Monitor will also notify the Service List when the Clearance Certificates are received.

4.3 Following the Final Distribution, the Monitor will apply for delisting of AGIF and seek the termination of these CCAA Proceedings.

4.4 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.

5.0 RECEIPTS AND DISBURSEMENTS SINCE THE THIRTY-SECOND REPORT

5.1 During the period from June 1 to November 30, 2020 (the "**Reporting Period**"), receipts consisted of only a nominal amount of interest on deposits.

5.2 Total disbursements during the Reporting Period were approximately CAD\$5.39 million and US\$34,000 and were comprised primarily of: (a) a Unitholder Interim Distribution in the amount of CAD\$5 million, (b) professional fees and expenses totaling approximately CAD\$202,000 paid to the Monitor, its legal counsel, the Applicants' legal counsel and tax consultants, and the CPS, and (c) amounts paid to the Trustees of AGIF of approximately CAD\$88,000 and US\$30,000.

5.3 As at November 30, 2020, the Monitor is holding approximately CAD\$3.3 million and US\$34,000 on behalf of the Applicants.

5.4 The Plan provides that certain reserves and cash pools be maintained in respect of the remaining obligations of the estates. All remaining funds held by the Monitor on behalf of the Companies are part of the Administrative Costs Reserve.

6.0 ACTIVITIES OF THE MONITOR

6.1 In addition to the activities of the Monitor described above, the Monitor's activities from the date of the Thirty-Second Report have included the following:

- coordinating the Unitholder Interim Distribution of CAD\$5 million, including arranging for the publication of related notices in *The Globe and Mail* (National Edition), the *Wall Street Journal* (National Edition) and the *Winnipeg Free Press*;
- communicating with KPMG in respect of QST and income tax matters, including matters related to obtaining Clearance Certificates;
- responding to inquiries from Unitholders and other stakeholders;

- continuing to make non-confidential materials filed with the Canadian Court and, in previous periods, with the U.S. Court publicly available on the Website;
- preparing this Thirty-Third Report;
- maintaining estate bank accounts and overseeing the accounting for the Applicants' receipts and disbursements pursuant to the Transition Order;
- preparing and filing GST/HST returns; and
- attending the June 23, 2020 Stay Extension Motion.

All of which is respectfully submitted to the Court of Queen's Bench this 10th day of December, 2020.

**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**ADDITIONAL APPLICANTS**

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

**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 OF 2800741 ONTARIO INC. (Applicant)**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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(Motion Returnable June 28, 2021)

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