

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE PACKAGED ICE ANTITRUST  
LITIGATION

Case Number: 08-MD-01952  
Honorable Paul D. Borman

THIS DOCUMENT RELATES TO:  
INDIRECT PURCHASER ACTIONS

**FEDERAL RULE OF CIVIL PROCEDURE 54(b) ORDER & FINAL  
JUDGMENT RE: THE HOME CITY ICE COMPANY**

Before the Court is Indirect Purchaser Plaintiffs' Motion for Final Approval of Their Settlement The Home City Ice Company ("Home City") (ECF No. 547) (the "Motion"). The Court held a duly noticed Final Fairness Hearing on July 11, 2017, during which it heard arguments from two objectors, counsel for Plaintiffs and Counsel for Defendant. As explained in detail in this Court's Opinion and Order Approving the Home City Settlement, entered this same day, after considering the Motion, the Declaration Of Rust Consulting's Heidi A. Taylor Regarding Settlement Administration (ECF No. 549), the Indirect Purchaser Plaintiffs' Response To The Court's Order Dated July 11, 2017 (ECF No. 554), including Supplemental Declaration Of Heidi A. Taylor Regarding Settlement Administration And Claims Validation (ECF No. 554-1), the Certification of CAFA Compliance (ECF No. 541), the Objections of Christopher Andrews (ECF No. 539), Pamela Sweeney (ECF No. 548) and James Willard (ECF No. 540)

(collectively, the “Objections”), and the arguments of Plaintiffs’ counsel, Defendant’s counsel, Objector James Willard’s counsel and Objector Christopher Andrews *pro se* at the final fairness hearing,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. The Court has jurisdiction over the subject matter of this litigation.
2. Terms used in this Order & Final Judgment are defined in the Settlement Agreement between the Indirect Purchaser Plaintiffs and The Home City Ice Company, made and entered into on March 7, 2012 (the “Settlement Agreement”) and Modification Agreement To Settlement Agreement Indirect Purchaser Plaintiffs and The Home City Ice Company, made and entered into as of October 24, 2017 (“Modification Agreement”), unless otherwise defined herein, have the same meanings.
3. Pursuant to this Court's Order Granting Preliminary Approval of Proposed Settlement Between Indirect Purchaser Plaintiffs and The Home City Ice Company and Authorizing Dissemination of Revised Notices and Claim Form (ECF No. 535), the Court granted preliminary approval of (a) the proposed settlement, (b) the certification of Settlement Classes I and II, (c) the notices and notice plan, and (d) the claim form and allocation plan. The Court now grants final approval of each of them.
4. As explained in greater detail in this Court's Opinion and Order

approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Court finds that the settlement was attained following an extensive investigation of the facts. It resulted from vigorous arm's-length negotiations, which were undertaken in good faith by counsel with significant experience litigating antitrust, class actions and complex cases.

5. As explained in greater detail in this Court's Opinion and Order approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Court finds that due and adequate notice was provided pursuant to Rule 23 of the Federal Rules of Civil Procedure to all members of the Class II Settlement Class certified herein, notifying the Class II Settlement Class of, *inter alia*, the pendency of the above-captioned action and the proposed settlement with Home City, the definition of the Settlement Classes, the relief available to the Settlement Class members under the proposed settlement, the rights that they would be giving up and their rights to exclude or object. The notice provided was the best notice practicable under the circumstances and included notice published in *Parade Magazine*, *USA Today*, on the Internet and individual notice by mail to each individual who filed a claim in the indirect purchaser class action settlement in *In re Arctic Glacier International Inc., et al.*, (U.S. Bankruptcy Court, D. Del.). Notice fully complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

6. As explained in greater detail in this Court's Opinion and Order approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Court finds that notice of the settlement was properly provided to all persons entitled to receive such notice, including federal and state attorneys general, in full compliance with the Class Action Fairness Act.

7. As explained in greater detail in this Court's Opinion and Order approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Court certifies the following Settlement Classes (the "Settlement Classes"):

**Class I:** All purchasers of Packaged Ice who purchased Packaged Ice in the United States indirectly from any of the Defendants or their subsidiaries or affiliates (including all predecessors thereof) at any time during the period from January 1, 2001 to March 6, 2008. Excluded from the Settlement Class are governmental entities and Defendants, including their parents, subsidiaries, predecessors or successors, Defendants' co-conspirators, and the Releasees.

**Class II:** All purchasers of Packaged Ice who purchased Packaged Ice in Arizona, Arkansas, California, District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin and Wyoming indirectly from any of the Defendants or their subsidiaries or affiliates (including all predecessors thereof) at any time during the period from January 1, 2001 to March 6, 2008. Excluded from the Settlement Class are governmental entities and Defendants, including their parents, subsidiaries, predecessors or successors, Defendants' co-conspirators, and the Releasees.

8. As explained in greater detail in this Court's Opinion and Order

approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Court finds that certification of the Settlement Classes is appropriate because:

- a. The Settlement Classes are so numerous that joinder of all members is impracticable, satisfying the requirement of Rule 23(a)(1);
- b. There are questions of law or fact common to the Settlement Classes, satisfying the requirement of Rule 23(a)(2);
- c. Lawrence J. Acker, Rich Aust, Brian W. Buttars, Nathan Croom, Robert DeLoss, James Feeney, Lehoma Goode, Ian Groves, Beverly Herron, Ainello Mancusi, Ron Miastkowski, Brandi Palombella, Karen Prentice, Brian Rogers, Patrick Simasko, John Spellmeyer, Wilton E. Spencer, Jr., Wayne Stanford, Joe Sweeney and Samuel Winnig (“Plaintiffs”) are appointed class representatives for the Settlement Classes. Plaintiffs’ claims are typical of the claims of the Settlement Classes, satisfying the requirement of Rule 23(a)(3);
- d. Plaintiffs fairly and adequately protected the interests of the Settlement Classes, satisfying the requirements of Rule 23(a)(4);
- e. Home City has acted on grounds that apply generally to members of Settlement Class I, so that final injunctive relief is appropriate respecting the Settlement Class I as a whole, satisfying Rule 23(b)(2);

and

- f. questions of law or fact common to the members of the Settlement Class II predominate over questions affecting only individual members and a class action is superior to other methods available for the fair and efficient adjudication of the controversy between the members of Settlement Class II and Home City, satisfying the requirements of Rule 23(b)(3).

9. The Court's certification of the Settlement Classes as provided herein is without prejudice to, or waiver of, the rights of any Defendant other than Home City to contest certification of any other class proposed by Plaintiffs. The Court's findings in this Order and Final Judgment shall have no affect on the Court's ruling on any motion to certify any class in this litigation and no party may cite or refer to the Court's approval of the settlement as persuasive or binding authority with respect to any motion to certify such class.

10. For period of three (3) years from the Effective Date, Home City is enjoined from entering into any combination, conspiracy or agreement with Arctic Glacier International, Inc., Reddy Ice Corporation or other person or entity or organization to allocate Packaged Ice customers, territories or markets, or raise, fix maintain, or stabilize the price of Packaged Ice that would be considered a *per se* unlawful restraint of trade under Section 1 of the Sherman Act. For purposes of

clarity, the prohibition that exists by way of this injunction shall not preclude Home City from entering into lawful and legitimate joint venture arrangements or acquisition, or, by way of example, maintaining and/or establishing co-packing relationships, which are commonplace in the industry and necessary legitimate business models for meeting the needs of large retail chain accounts with remote locations.

11. As explained in greater detail in this Court's Opinion and Order approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Court finds that the Settlement Agreement and allocation plan that were preliminarily approved are fair, reasonable and adequate to the Settlement Classes, and the settlement with Home City is hereby approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

12. As explained in greater detail in this Court's Opinion and Order approving the Indirect Purchasers' Settlement Agreement with Home City, entered this same day, the Objections are overruled.

13. All Released Claims of Plaintiffs and the Settlement Classes that were asserted against Home City in *In re Packaged Ice Antitrust Litig.*, MDL No. 1952 are dismissed with prejudice (except that the dismissal is without prejudice to claims for damages or monetary relief as to Settlement Class I Members or Settlement Class II Members for purchases of Packaged Ice in states other than the

Class II States), and, except as provided for in the Settlement Agreement, without costs.

14. Upon the occurrence of the Effective Date, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action for injunctive or equitable relief including costs, expenses, and attorneys' fees, whether class, individual, or otherwise in nature, that Class I Releasers, or any one of them, ever had, now has, or hereafter can, shall, or may have directly, representatively, derivatively or in any other capacity against the Releasees or any of them, whether known or unknown, suspected or unsuspected, in law or equity, on account of or arising out of or resulting from the purchase of Packaged Ice during the Class Period, or from conduct that occurred prior to the Effective Date of this Agreement concerning the sale of Packaged Ice (including any allegations of collusion among Defendants and/or any other manufacturers of Packaged Ice), whether they arise under any federal or state law, including but not limited to any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, unjust enrichment or civil conspiracy law including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. (the "Class I Released Claims"), subject to the limitations provided in the next two sentences. First, nothing in this paragraph shall release any claim made by a Class I Releaser arising from a direct

purchase of Packaged Ice from a Defendant or for any product defect or similar claim (including, but not limited to, claims for property damage or personal injury). Second, nothing in this paragraph shall release any claim made by a Class I Releasor for damages or monetary relief arising from the purchase of Packaged Ice indirectly in a state other than a Class II State.

15. Upon the occurrence of the Effective Date, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, damages, liabilities of any nature, including costs, expenses, penalties, and attorneys' fees, whether class, individual, or otherwise in nature, that Class II Releasors, or any one of them, ever had, now has, or hereafter can, shall, or may have directly, representatively, derivatively or in any other capacity against the Releasees or any of them, whether known or unknown, suspected or unsuspected, in law or equity, on account of or arising out of or resulting from the purchase of Packaged Ice in the Class II States during the Class Period, or from conduct that occurred prior to the Effective Date of this Agreement concerning the sale of Packaged Ice in the Class II States (including any allegations of collusion among Defendants and/or any other manufacturers of Packaged Ice), whether they arise under any federal or state law, including but not limited to any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, unjust enrichment or civil

conspiracy law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. (the “Class II Released Claims”), or any other law; provided, however, that nothing in this paragraph shall release any claims for damages or monetary relief for purchases in states other than the Class II States, any claims made by direct purchasers of Packaged Ice as to their direct purchases, or any product defect or similar claim (including, but not limited to, claims for property damage or personal injury).

16. Each member of the Settlement Classes shall not, after the Effective Date of the Settlement Agreement, seek to institute, maintain or continue to maintain or prosecute any suit or action, or collect from, or proceed against, the Releasees, based on the Released Claims.

17. Except as provided in the Settlement Agreement and the Modification Agreement, Home City shall have no obligation for attorneys’ fees, costs or expenses, including, but not limited to, expenses of administering and distributing the Settlement Fund, which expenses are to be paid out of the Settlement Fund subject to further order of this Court. In no event shall monies in excess of \$650,000 for such expenses be withdrawn from the Settlement Fund.

18. This Order and Final Judgment does not settle or compromise any claims by Plaintiffs or the Settlement Classes against any other Defendant or person or entity other than the Releasees, and all rights against any other

Defendant or other person or entity are specifically reserved. The sales of Packaged Ice to members of the Settlement Classes by Home City shall remain in this action against the non-settling Defendants as a basis for damage claims and shall be part of any joint and several liability claims against any non-settling Defendant or other person or entity other than the Releasees.

19. Nothing in this Order and Final Judgment or the Settlement Agreement and no aspect of the settlement or negotiation thereof is or shall be deemed or construed to be an admission or concession of any violation of any statute or law or of any liability or wrongdoing by Home City or of the truth of any of the claims or allegations in any of the complaints in the Action or any other pleading, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, other than to enforce the terms of this Order and Final Judgment or the Settlement Agreement.

20. The Court further finds that the escrow account described in the Settlement Agreement and Modification Agreement is a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

21. Without affecting the finality of the Final Judgment in any way, this Court hereby retains continuing jurisdiction for the purposes of, inter alia,

implementing and enforcing the Settlement Agreement and Modification Agreement (including any issue that may arise in connection with the formation and/or administration of the QSF), and entering orders regarding the disbursement of the Settlement Fund.

22. It is hereby ORDERED that Indirect Purchaser Plaintiffs shall submit to the Court for review and approval a final report and accounting from Rust, prepared following completion of the claims payment process, that shall comply with the terms of this Court's separate Opinion and Order entered this day and with the terms of this Final Order and Judgment.

23. The Court expressly finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and expressly directs the entry of Final Judgment as to Home City.

SO ORDERED.

s/Paul D. Borman  
Paul D. Borman  
United States District Judge

Dated: August 23, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 23, 2017.

s/D. Tofil  
Deborah Tofil, Case Manager