

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Y & R'S, INC., on behalf of itself and all others similarly situated,)	
)	Case No.
)	
Plaintiff,)	
)	CLASS ACTION COMPLAINT
v.)	
)	
REDDY ICE HOLDINGS, INC., REDDY ICE CORPORATION, ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL, INC., and HOME CITY ICE COMPANY, INC.)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	

CLASS ACTION COMPLAINT

Plaintiff, Y & R's, Inc., on behalf of itself and all others similarly situated, brings this action under the federal antitrust laws, Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15 and 26, to recover treble damages, injunctive relief, and the costs of suit, including reasonable attorneys' and experts' fees, for the injuries to the Plaintiff and members of the proposed Class it represents resulting from Defendants' violations of the federal antitrust laws, specifically Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. The allegations set forth below are based upon information and belief pursuant to the investigation of counsel.

NATURE OF CLAIM

1. This antitrust class action arises out of an international conspiracy among Defendants and their co-conspirators with the purpose and effect of fixing prices, allocating markets and territories and committing other anticompetitive practices designed to unlawfully

fix, raise, maintain, and/or stabilize prices of packaged cubed, crushed, block and dry ice (“Packaged Ice”) in the United States and Canada.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 15 U.S.C. § 15 and 26, and pursuant to 28 U.S.C. § 1331, 1337(a). This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c) because some of the Defendants reside, or are licensed to do business or are doing business, or are found or transact business, in this district and/or the claims arose in this district.

PARTIES

4. Y & R’s, Inc. is a Pennsylvania corporation located in Philadelphia, Pennsylvania and operating as a convenience store. Y & R’s, Inc. purchased Packaged Ice directly from one or more of the Defendants during the Class Period, and was damaged as a result of Defendants’ unlawful conduct.

5. Defendant Reddy Ice Holdings, Inc. (“Reddy Holdings”) is a Delaware corporation with its principal place of business located in Dallas, Texas. Reddy Holdings is the parent of its wholly-owned subsidiary, Defendant Reddy Ice Corporation (“Reddy Corp.”). Reddy Corp. is a Delaware corporation with its principal place of business located in Dallas, Texas. Hereinafter Reddy Holdings and Reddy Corp. will be referred to as “Reddy Ice.” Reddy Ice is the largest manufacturer and distributor of packaged ice in the United States. With over 2,000 year-round employees, Reddy Ice sells its products primarily under the widely known Reddy Ice® brand to approximately 82,000 locations throughout the United States. Reddy Ice

provides a broad array of product offerings in the marketplace through traditional direct store delivery, warehouse programs, and its proprietary technology, The Ice Factory®. Reddy Ice serves most significant consumer packaged goods channels of distribution, as well as restaurants, special entertainment events, commercial users and the agricultural sector.

6. Reddy Ice is the largest ice company in North America, recording 2007 sales of \$339 million. It has the dominant market position in the U.S. sunbelt states, from Florida to Arizona.

7. Reddy Ice manufactures and distributes ice products, including cubed ice, crushed ice, half-moon and cylindrical ice, block ice, and dry ice. Reddy Ice sells approximately 1.9 million tons of ice per year, primarily packaged in seven and ten pound bags, sold principally to convenience stores and supermarkets.

8. Reddy Ice has a dominant market position in the southern United States (GA, FL, SC, NC, KY, AL, TN, MS, LA, AR, TX, OK, AZ, and NM) as well as the mid-Atlantic (VA, WV, DE, DC, MD, NJ, PA).

9. During the Class Period, as defined below, Reddy Ice began trading on the New York Stock Exchange. Prior to August 12, 2005, it had been privately held under the name Packaged Ice, Inc.

10. Defendant Arctic Glacier Income Fund is the Canadian holding company for its operating subsidiary Arctic Glacier Inc. (together, "Arctic Glacier"). Arctic Glacier is a business entity organized under the laws of Alberta, Canada with its principal place of business located in Winnipeg, Manitoba. Through its operating company, Arctic Glacier Inc., Arctic Glacier Income Fund is a leading producer, marketer and distributor of high-quality packaged ice in North America under the brand name of Arctic Glacier® Premium Ice. Arctic Glacier operates 37

manufacturing plants and 50 distribution facilities across Canada and the northeast, central and western United States servicing more than 70,000 retail accounts.

11. Second to Reddy Ice, Arctic Glacier is the second-largest producer, marketer, and distributor of packaged ice in North America, with total revenues of \$249 million for 2007. Of these revenues, more than 80 percent comes from its U.S. operations, in which it has dominant market positions in major eastern seaboard cities such as New York and Philadelphia. The company also controls most of the Packaged Ice sales in Canada.

12. Arctic Glacier has a dominant market position in numerous states, including the Central states (ND, SD, NE, KS, MO, IA, MN, WI, MI, TX), California and the Northeast (PA, NJ, NY, and ME).

13. Defendant Arctic Glacier International Inc. (“Arctic Glacier International”) is a wholly-owned subsidiary of Arctic Glacier and serves as its operating and holding subsidiary in the United States. Arctic Glacier International is a Delaware Corporation with its principal place of business located in West St. Paul, Minnesota.

14. Defendant Home City Ice Company (“Home City Ice”) is a privately-held company located in Cincinnati, Ohio. Home City Ice has a dominant market position across all of several states in the Midwest and East (IL, OH, IN, WV, KY) as well as parts of several other states (MI, PA, TN, NY, and MD). Home City Ice manufactures 4,400 tons of ice per day in 28 state-of-the-art manufacturing plants, with 36 distribution centers, and has a fleet of over 500 trucks to serve the Midwest.

15. Home City is the third largest manufacturer and distributor of Packaged Ice in the United States with sales of more than \$60 million per year.

16. Defendants Reddy Ice, Arctic Glacier and Home City are the only suppliers of

Packaged Ice in the United States with the capacity to service large multi-state retail operations such as supermarket chains, mass merchandisers and chain convenience stores. While there is a fringe of small manufacturers of Packaged Ice in certain locations, their sales and capacity are limited, and they lack the ability to substantially compete with defendants in the supply of Packaged Ice.

CO-CONSPIRATORS

17. Upon information and belief, other individuals, partnerships, firms, corporations and associations are co-conspirators with Defendants and have performed acts and made statements in furtherance of the unlawful restraint of trade. Their identities are not known to Plaintiff at this time.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on its own behalf and on behalf of all others similarly situated. The “Class” is defined as:

All persons, corporations, and other legal entities in the United States (excluding defendants, their subsidiaries, and any co-conspirators), who purchased Packaged Ice directly from one or more of the Defendants (the “Class”) in the United States and Canada at any time from at least January 1, 2002 through the present (the “Class Period”).

19. The members of the Class are so numerous and geographically dispersed across the country that joinder of all members of the Class would be impracticable. Due to the nature of the claims asserted here, Plaintiff believes that members of the Class are located throughout the United States and Canada. The exact number of Class members is unknown by Plaintiff at this time, but Plaintiff believes that the Class is in the thousands and their identities can only be

discovered through inspection of Defendants' and their co-conspirators' records, which are or should be readily available.

20. Plaintiffs claims are typical of the members of the Class because Plaintiff and all members of the Class were damaged by the same wrongful conduct of the Defendants alleged herein. Plaintiff and the Class purchased Packaged Ice at artificially maintained, non-competitive prices established by the actions of Defendants and their unnamed co-conspirators in connection with the wrongful conduct alleged herein.

21. Plaintiff will fairly and adequately protect the interests of the Class. The interests of Plaintiff are coincident with, and not antagonistic to, those of the Class. In addition, Plaintiff is represented by counsel who is experienced and competent in the prosecution of complex class action antitrust litigation.

22. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual members, if any, in that Defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

- a. Whether Defendants conspired with the purpose and effect of fixing prices, allocating markets and committing other anticompetitive practices designed to unlawfully fix, raise, maintain, and/or stabilize prices of Packaged Ice;
- b. Whether Defendants' conduct violated Section 1 of the Sherman Act;
- c. The existence, duration, and illegality of the contract, combination or conspiracy alleged herein;
- d. The effect upon and the extent of injuries sustained by Plaintiff and members of the Class and the appropriate type and/or measure of damages;

e. Whether Defendants took affirmative steps to conceal the contract, combination or conspiracy alleged herein; and

f. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

23. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by certain class members, who could not afford to individually litigate an antitrust claim against large corporate defendants.

24. Plaintiff is not aware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

INTERSTATE TRADE AND COMMERCE

25. The Defendants are leading manufacturers of Packaged Ice in the United States and Canada.

26. The restraints hereinafter alleged have directly and substantially affected interstate commerce in that the Defendants have deprived Plaintiff and the Class of the benefits of free and open competition in the Packaged Ice market throughout the United States and Canada.

ANTICOMPETITIVE CONDUCT

27. Defendants are the largest manufacturers of Packaged Ice in the United States and North America. Sales of Packaged Ice are approximately \$1.8 billion annually. About half of

those sales are produced by third-party manufacturers, with the other half produced in-house (ice machines). Sales by Defendants comprise approximately 70% of third-party manufacturers' sales of Packaged Ice.

28. Canada is a major exporter of ice into the United States.

29. Beginning at least as early as January 1, 2002, the exact date being unknown to Plaintiff, and continuing thereafter to present day, Defendants and their coconspirators engaged in an unlawful contract, combination or conspiracy with the purpose and effect of fixing prices, allocating markets and committing other anticompetitive practices designed to unlawfully fix, raise, maintain, and/or stabilize prices of Packaged Ice in a *per se* violation or unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

30. The Packaged Ice industry has high barriers to entry. The industry has high start-up and replacement costs, and many customers carry only one brand of ice and have long term relationships of ten or more years with the manufacturer from whom they purchase Packaged Ice products.

31. The Packaged Ice industry has faced substantial consolidation within the last few years.

a. Defendant Reddy Ice has continuously purchased small ice companies in various locations. During 2006, Reddy Ice purchased ten ice companies, and during 2007, it purchased an additional twenty ice companies.

b. Arctic Glacier has purchased numerous smaller ice companies. In 2006, Arctic Glacier acquired Happy Ice LLC, the largest ice company in upstate New York. Also in 2006, it acquired six companies collectively known as California Ice, which enabled Arctic Glacier to become the largest Packaged Ice producer in California. In

2007, Arctic Glacier purchased an additional company called Union Ice in Southern California.

32. Through acquisitions, defendants have increased their market power and reduced the ability of any other Packaged Ice companies to compete for customers serviced by Defendants.

33. During the Class Period, Defendants engaged in illegal, anticompetitive conduct by, *inter alia*, allocating markets so that Defendants were no longer in competition with each other.

34. Defendants agreed not to compete head to head in the markets in which one of them was dominant. Each region of the U.S. market, as alleged herein, is controlled by one particular Packaged Ice manufacturer.

35. Pursuant to the combination or conspiracy, Defendants have implemented price increases for Packaged Ice sold in the United States. For example, as a result of Defendants' anticompetitive conduct, they implemented price increases of approximately 4% in or about May 2002, and again of approximately 4% in or about September 2003. Thereafter, Defendants have raised prices for Packaged Ice by approximately 3-1/2% per annum over the ensuing time period.

36. During the Class Period increases in input costs do not justify the price increases.

37. By engaging in conduct that allocated the market among the Defendants, price competition was reduced or eliminated throughout the United States and Canada.

38. The Packaged Ice industry is highly seasonal, characterized by peak demand during the warmer months of May through September. Approximately 69 percent of annual revenues occur during this time.

39. Demand for Packaged Ice within specific geographic areas is affected by weather conditions. There is an extended peak selling season in the southern United States, where temperatures remain warm beyond September. Revenues typically increase during particularly hot summers. Cool and/or rainy seasons, however, negatively impact ice purchases.

40. According to Gina Talamona, a spokesperson for the Antitrust Division of the United States Department of Justice (“DOJ”), the DOJ is investigating possible anti-competitive practices in the Packaged Ice business.

41. The DOJ investigation follows a complaint made to Canada’s Competition Bureau (“Bureau”) by Jerry Antoniuk, owner of Polar Ice, an Edmonton, Canada Packaged Ice manufacturer. Antoniuk complained to the Bureau and brought a civil antitrust suit against Arctic Glacier alleging that Arctic Glacier engaged in strong-arm tactics in the Edmonton geographic area, including “muscling,” bribing, and offering kickbacks to Polar Ice’s customers. Justice Richard Marceau of Court of Queen’s Bench of Alberta awarded Polar Ice \$50,000 in damages, a decision that Arctic Glacier said it would appeal.

42. On or about March 6, 2008, Arctic Glacier issued the following press release:

Arctic Glacier Income Fund (TSX:AG.UN) today announced that on March 5, 2008, its operating subsidiary, Arctic Glacier Inc., became aware the Antitrust Division of the United States Department of Justice is conducting an investigation into possible antitrust issues in the Packaged Ice industry. The company will cooperate with authorities in the course of the investigation.

43. Just prior to this news, Arctic Glacier had reported a fourth-quarter loss of \$3.7 million on revenue of \$36.3 million. In the same quarter of the previous year, the fund lost \$6.2 million, or 19 cents a unit, on revenue of \$39.9 million. They reported that the stronger Canadian dollar reduced reported sales by \$4.5 million during the quarter.

44. Also on or about March 6, 2008, Reddy Ice issued the following press release:

Reddy Ice Holdings, Inc. (NYSE: FRZ) announced that federal officials executed a search warrant at the Company's corporate office in Dallas on March 5, 2008. The Company is cooperating with the authorities.

The Company's priority mission is to provide superior service to its customers, and it will continue to function in a normal business manner.

45. On or about March 7, 2008, Reddy Ice issued the following additional press release:

Reddy Ice Holdings, Inc. (NYSE: FRZ) is providing further information to supplement the press release issued on March 6, 2008 regarding the execution of a search warrant at the Company's Dallas corporate office on March 5, 2008. The execution of the search warrant was directed by the Antitrust Division of the United States Department of Justice in connection with an investigation of the packaged ice industry. The Company's board of directors has formed a special committee of independent directors to conduct an internal investigation.

The Company will continue to serve its customers in its normal business manner.

46. Reddy ice spokeswoman Courtney Birck said that the DOJ took "various documents and information," but she would not say whether computers were taken.

47. Between December 1, 2007 and January 3, 2008, both the Chief Operating Officer and Chief Executive Officer of Reddy Ice resigned, just prior to the time that the DOJ executed its search warrants.

ALLEGATIONS OF ANTITRUST INJURY TO PLAINTIFF AND THE CLASS

48. The aforesaid combination and conspiracy has had the following effects, among others:

a. price competition for Packaged Ice has been suppressed, restrained and eliminated;

b. the price of Packaged Ice has been raised, fixed, maintained and stabilized at artificial and non-competitive levels; and

c. customers of Packaged Ice were deprived of free and open competition in the Packaged Ice market.

49. During the period covered, Defendants charged Plaintiff and the Class anticompetitive prices for Packaged Ice. By reason of the alleged violations of the antitrust laws, Plaintiff and the Class have sustained injury to their business or property, having paid higher prices for Packaged Ice than they would have paid in the absence of the illegal contract, combination or conspiracy, and, as a result, have been injured in their business and have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

50. The specific amounts of damages have not yet been determined because such determination will require discovery. When these amounts have been determined, Plaintiff will seek leave of Court to amend this Complaint to include such amounts.

FRAUDULENT CONCEALMENT

51. The running of any statute of limitations has been suspended with respect to any claims which the Plaintiff and the other members of the Class have sustained as a result of the unlawful combination and conspiracy alleged herein and with respect to their rights to injunctive relief by virtue of the federal doctrine of fraudulent concealment. Defendants, through various devices and techniques of secrecy, affirmatively and fraudulently concealed the existence of the unlawful combination and conspiracy alleged herein.

COUNT I
VIOLATION OF SECTION 1 OF THE SHERMAN ANTITRUST ACT

52. Plaintiff incorporates by reference the allegations above and adopt same as though fully set forth herein.

53. Defendants and un-named conspirators entered into and engaged in a contract, combination, or conspiracy in an unreasonable restraint of trade in violation of the Section 1 of the Sherman Act.

54. As a result of the contract, combination or conspiracy among Defendants and their co-conspirators alleged herein, prices charged for Packaged Ice were fixed, maintained, and standardized in the United States. The alleged contract, combination, or conspiracy is a *per se* violation of federal antitrust laws and is at a minimum an unreasonable and unlawful restraint of trade.

55. The contract, combination or conspiracy has had the following effects:

- a. prices charged to Plaintiff and the Class for Packaged Ice were fixed or stabilized at non-competitive levels;
- b. Plaintiff and the Class have been deprived of the benefits of free, open and unrestricted competition in the market for Packaged Ice; and
- c. competition in establishing the prices paid and locations of doing business has been unlawfully restrained, suppressed and eliminated.

56. As a proximate result of Defendants' unlawful conduct, Plaintiff and the Class have sustained damage by paying supra-competitive prices that they would not have had to incur but for the unlawful conduct of Defendants as alleged herein.

COUNT II
FOR RESTITUTION, DISGORGEMENT AND CONSTRUCTIVE
TRUST FOR UNJUST ENRICHMENT BY DEFENDANTS

57. In the alternative, Plaintiff pleads and otherwise repeats and re-alleges the preceding and subsequent paragraphs as though set forth herein.

58. As a result of their unlawful conduct described above, Defendants have been and will continue to be unjustly enriched. Defendants have been unjustly enriched, to the detriment of Plaintiff and the Class by the receipt of, at a minimum, unlawfully inflated prices and illegal profits for Packaged Ice. Defendants have benefited from their unlawful acts and it would be inequitable for Defendants to be permitted to retain any of their ill-gotten gains.

59. Plaintiff and the Class are entitled to the amount of Defendants' ill-gotten gains resulting from Defendants' unlawful, unjust and inequitable conduct. Plaintiff and the Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiff and the Class may make claims on a *pro rata* basis.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b) and otherwise, Plaintiff respectfully demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that:

A. The Court determine that this action may be maintained as a class action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2), Federal Rules of Civil Procedure, be given each and every member of the Class;

B. The unlawful combination and conspiracy alleged herein be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

C. Plaintiff and the Class recover compensatory damages, as provided by law, determined to have been sustained by each of them, and that joint and several judgments in favor of Plaintiff and the Class, respectively, be entered against the Defendants, in an amount to be trebled in accordance with antitrust laws, and each of them;

D. Defendants be enjoined from continuing the unlawful contract, combination or conspiracy alleged herein;

E. Plaintiff and the Class recover their costs of this suit including reasonable attorneys' fees, expert fees, and accountant's fees, as provided by law; and

F. Plaintiff and the Class be granted such other, further and different relief as the nature of the case may require or as may seem just and proper to this Court.

DATED: March 27, 2008

Respectfully submitted,

CAFFERTY FAUCHER LLP

/s/Patrick E. Cafferty
Patrick E. Cafferty
101 North Main Street, Ste. 450
Ann Arbor, MI 48104
Tel: 734-769-2144
Fax: 734-769-1207
Email: pcafferty@caffertyfaucher.com
Bar No. P35613

CHIMICLES & TIKELLIS LLP

Steven A. Schwartz (Bar No. 50579 (Pa))
Email: steveschwartz@chimicles.com
Daniel B. Scott (Bar No. 87468 (Pa.))
Email: danielscott@chimicles.com
361 West Lancaster Avenue
Haverford, PA 19041
Tel: 610-642-8500
Fax: 610-649-3633

Counsel for Plaintiff