

# **Exhibit D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA,	.	Case Number 1:09-cr-149
	.	
Plaintiff,	.	Cincinnati, Ohio
	.	
- v -	.	Thursday, February 11, 2010
	.	10:00 a.m. Hearing
ARCTIC GLACIER	.	
INTERNATIONAL, INC.	.	
	.	<b>Sentencing Hearing</b>
Defendant.	.	
.....	.	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES DEPARTMENT OF JUSTICE  
 BY: Kevin C. Culum, Esq.  
 and Donald M. Lyon, Esq.  
 Antitrust Division  
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For the Defendant Arctic Glacier International, Inc:

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For the Petitioners: David F. Axelrod, Esq.  
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For the Victims Group - Martin McNulty and Gary Mowery:

Daniel Low, Esq.  
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Matthew S. Wild, Esq.  
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Also Present:

Hugh A. Adams (Deft's Corporate Rep.)

Gary Mowery

Laura Jensen (U.S. Probation Department)

S/A James Brennan (FBI)

Don Brown (Economist)

James R. Nelson, Esq. (Counsel for Reddy Ice)

James (Jay) Stautberg (Home City Ice Corporate Rep.)

Michael A. Roberts, Esq.

Ralph W. Kohnen, Esq. (Afternoon Session)

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Clerk: Darlene Maury

Court Reporter: Mary Ann Ranz  
810 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202

- - -

1 THE COURT: I thought so.

2 MR. LOW: Your Honor, if there is an opportunity to  
3 speak before the recess, we would appreciate that.

4 THE COURT: Well, certainly go ahead. And -- go  
5 ahead and speak at this time, if you wish. And you can speak  
6 from wherever you wish, or use the lectern.

7 MR. LOW: Your Honor, Daniel Low on behalf of Movants  
8 Martin McNulty and Gary Mowery.

9 If I could, I would like to briefly address Mr. McNulty's  
10 situation and read a statement that he's provided to me to  
11 read on his behalf. I'd like to give Mr. Mowery, who's here,  
12 an opportunity to speak on his behalf. And then I would like  
13 to briefly address the Court on the legal issues related to  
14 their request for restitution.

15 Mr. McNulty was a packaged ice executive for Party Time  
16 Ice, which was acquired by Arctic Glacier in December of 2004.  
17 While at Party Time, Mr. McNulty was told by Chuck Knowlton  
18 about the conspiracy to allocate customers. And Mr. Knowlton  
19 threatened to boycott --

20 THE COURT: What year was this?

21 MR. LOW: This was -- he learned --

22 At various times he was told about the conspiracy, dating  
23 back to as early as 1997, but not directly from Mr. Knowlton.  
24 From other Party Time distributors.

25 THE COURT: This is Party Time talking?

1 MR. LOW: Yes, which is the company that was acquired  
2 by Arctic Glacier and is referenced in the --

3 THE COURT: So Arctic Glacier wasn't involved in  
4 these conversations?

5 MR. LOW: Correct, except --

6 THE COURT: All right.

7 MR. LOW: -- insofar as they acquired that liability.

8 Mr. Knowlton told Mr. McNulty that if he left Party Time,  
9 he would -- that Mr. Knowlton could boycott him from  
10 employment anywhere in the packaged ice industry.

11 THE COURT: That was Party Time talking?

12 MR. LOW: Right, Your Honor.

13 THE COURT: Okay.

14 MR. LOW: After Party Time was acquired by Arctic  
15 Glacier, Mr. McNulty had discussions with Keith Corbin of  
16 Arctic Glacier, who was an Arctic Glacier executive.

17 Mr. Corbin instructed Mr. McNulty to participate in the  
18 customer allocation conspiracy and threatened to arrange a  
19 boycott by the industry of Mr. McNulty if he refused to  
20 participate.

21 Mr. McNulty, in fact, refused to go along with the  
22 conspiracy and he was fired by Arctic Glacier. He went to the  
23 Department of Justice and he cooperated with the Department in  
24 investigating the criminal conspiracy. He made tape  
25 recordings and assisted them. He applied to various other

1 companies in the packaged ice industry.

2 THE COURT: When was this?

3 MR. LOW: This would have been beginning --

4 THE COURT: After Corbin's conversation, or --

5 MR. LOW: After Corbin's conversation.

6 THE COURT: When was he terminated?

7 MR. LOW: He was terminated in late July of 2005.

8 THE COURT: And then he went to -- did he go to the  
9 DOJ after that or before?

10 MR. CULUM: Your Honor, he left Party Time as early  
11 as March of 2005. I think it was February. I know that he  
12 had a period of time where he got, like, severance time. But  
13 his time at the Party Time ended, I believe, by March of 2005.  
14 I may be incorrect. I'm fully certain --

15 THE COURT: He was never employed by Arctic?

16 MR. CULUM: Arctic Glacier. He was employed by  
17 Arctic Glacier from approximately the end of 2004 through  
18 approximately March of 2005.

19 THE COURT: All right. Thank you.

20 MR. LOW: Your Honor, I think it was in fact a little  
21 bit earlier. I think it was the end of January that he was  
22 terminated; signed a severance agreement I believe in March of  
23 '05. He made the decision to go to the government.

24 THE COURT: Was the severance agreement with Arctic?

25 MR. LOW: Yes, Your Honor.

1 THE COURT: All right.

2 MR. LOW: He made the decision to go to the  
3 government shortly before he was terminated, contacted them  
4 shortly thereafter. Initially, the state government  
5 authorities and a few months later contacted the Department of  
6 Justice.

7 He started applying to other packaged ice companies later  
8 in 2005 and was unable to obtain employment with any company.

9 There were two individuals who told him that he would not  
10 be able to obtain employment in the industry until he stopped  
11 cooperating with the government. Those were Geoff  
12 Lewandowski, who was a former Arctic Glacier employee who said  
13 he had conversations with Arctic Glacier about Mr. McNulty, as  
14 well as Mr. Fiaz Simon, who said he was speaking on behalf of  
15 Charles Knowlton of Arctic Glacier.

16 THE COURT: I thought Knowlton was with Party Time.

17 MR. LOW: Mr. Knowlton was with Party Time. Party  
18 Time, after it was acquired --

19 THE COURT: Okay.

20 MR. LOW: -- Mr. Knowlton went with -- went over to  
21 Arctic Glacier.

22 And because Mr. McNulty was directly harmed by acts in  
23 furtherance of the conspiracy, he's moving for restitution in  
24 this case.

25 I'd like to read a statement by Mr. McNulty. I'll come

1 back to the legal issues around restitution. And this is a  
2 short letter from Mr. McNulty. It says:

3 "I would like to say to the Court that the conspiracy  
4 has ruined me. I fought back against incredible odds in  
5 an attempt to prove that I was being blackballed from an  
6 industry which I had spent nearly 14 years of my life  
7 working in..

8 "I was offered large sums of money by the  
9 conspirators if I would only agree to stop talking to the  
10 Feds. I refused to do so.

11 "I initially contacted the Department of Justice over  
12 four and a half years ago, because I felt that I had to  
13 fight back against an organization headed by men who quite  
14 literally felt that they owned me and my career.

15 "Now, after so much additional information has been  
16 brought to the forefront and so many of these individuals  
17 have admitted their guilt, I see that said organization  
18 was even more despicable than I ever imagined.

19 "Obviously, I'm not the only person that they  
20 attempted to destroy, nor would I ever claim to be.  
21 However, I'm a victim of the defendants in every  
22 sense -- morally, ethically, and I would ask the Court to  
23 rule legally.

24 "Your Honor, I do not have the ability to articulate  
25 to you the toll which my deciding to blow the whistle on



1 these individuals has taken on my family, my marriage, our  
2 health, even my faith. Suffice it to say that all have  
3 been rocked to the core.

4 "Candidly, I oftentimes find myself questioning  
5 whether or not I should have blown the whistle when I'm  
6 faced with the realization of the hell on earth which my  
7 wife and child have endured these past five years.

8 "Lastly, for I honestly do not know whether or not  
9 my decision to blow the whistle was worth it or not, I can  
10 say unequivocally that absent my doing so, I strongly  
11 believe that these defendants would absolutely still be  
12 conducting the various unlawful actions which they have  
13 pled guilty to."

14 I would ask Gary Mowery to speak.

15 THE COURT: Certainly.

16 MR. MOWERY: Thank you, Your Honor.

17 THE COURT: Introduce yourself to the record, please.

18 MR. MOWERY: I'm Gary Mowery. I reside in Bowling  
19 Green, Ohio.

20 I do thank the courts for taking this sentencing  
21 seriously.

22 I understand that antitrust laws were written to protect  
23 our economical system in the U.S. and also to protect  
24 competition that it could flourish, thrive.

25 In 2003, actually 2002, my family, my two son-in-laws and

1 my son made a decision to enter into the ice industry to  
2 package and produce a product and take it to the market.

3 In our relevant market in northwest Ohio, we pretty much  
4 had two customers or two suppliers of ice -- one being Home  
5 City Ice, and one being Sterling's Ice out of Wauseon, Ohio.

6 My son-in-law worked for --

7 THE COURT: I thought your company made ice.

8 MR. MOWERY: My company did make ice.

9 THE COURT: Oh, okay. All right.

10 MR. MOWERY: My son-in-law worked for Sterling's Ice  
11 Company in 2000 and 2001. He came to work for me in my  
12 industrial supply business in 2001.

13 In 2002, we learned that Sterling's was getting out of the  
14 ice industry, they were no longer going to make ice. And we  
15 found that the market needed a second competitor. We chose to  
16 purchase an ice machine, a piece of property that was an old  
17 ice company that was still there but not operational.

18 Before we had moved our machine into our building, we were  
19 contacted by a representative, two representatives, of Home  
20 City Ice and we were intimidated. We were kind of told that  
21 to get in the ice industry properly would be -- suggested that  
22 we buy an existing ice company. And we decided we did not  
23 want to buy an ice company, we wanted to start a business on  
24 our own, make a product, and take it to market.

25 We hit the market in April of 2003. And there was a

1 little ice company that came out of Monroe, Michigan called  
2 Arctic Refrigeration. We took one of his customers, and we  
3 got a phone call, very disturbing phone call, swearing at us,  
4 cursing us, explaining that ice industry rules predict that --  
5 state that you're not able to solicit one another's customers.

6 I said, "Well, how can that be? What are you telling me?  
7 Where do I get my business?"

8 "Well, new customers are up for grabs."

9 Shortly thereafter we were placing merchandisers and  
10 picking up customers, and the following week we were picking  
11 those merchandisers up. Our competitor did actually predatory  
12 acts of antitrust laws where they actually literally gave free  
13 ice, rebate checks, discriminatory allowances.

14 I contacted our attorney in May of 2003. One month after  
15 we had been in business, we filed a state suit. We had  
16 contracts that were written. Contracts were broken. I was  
17 pretty disturbed. My son --

18 THE COURT: You did file suit?

19 MR. MOWERY: We did file a state suit.

20 THE COURT: I understand. All right.

21 Now, this was because of the antitrust violations?

22 MR. MOWERY: Correct.

23 THE COURT: All right.

24 MR. MOWERY: I started trying to figure out what we  
25 got into. I started making phone calls to other ice

1 companies.

2 THE COURT: What time was this? What was the time?  
3 When?

4 MR. MOWERY: We're only in business one month.

5 THE COURT: Well, what year?

6 MR. MOWERY: April -- I'm sorry, May of 2003. We  
7 started in April 2003. We filed suit in May of 2003, and the  
8 action didn't cease. We were out there competing in an  
9 industry --

10 THE COURT: Did you sue Arctic Glacier?

11 MR. MOWERY: We actually filed suit against Home City  
12 Ice.

13 THE COURT: Home City. All right.

14 MR. MOWERY: So, I started making calls, trying to  
15 figure out, you know, what's going on. I made a number of  
16 phone calls throughout Ohio, Indiana, Michigan, Illinois, West  
17 Virginia.

18 Our attorney at one point, our second attorney, approached  
19 the FBI, and I actually cooperated as a cooperating witness.  
20 I made phone calls.

21 THE COURT: This was on the state suit?

22 MR. MOWERY: This is on -- oh, we had dropped our  
23 state suit --

24 THE COURT: All right.

25 MR. MOWERY: -- in 2004. We filed federal -- federal

1 suit in -- I'm sorry. We filed -- we dropped our state suit  
2 in 2003. We filed a federal antitrust suit in 2004.

3 THE COURT: Now, where did you file that, Toledo?

4 MR. MOWERY: We filed that in Toledo, Federal  
5 District Court.

6 THE COURT: And what happened?

7 MR. MOWERY: We tried to get it to trial. We just --  
8 we could not hang on as a company. We were actually -- I feel  
9 we were forced to settle, get out of the market.

10 In 2005, when we met with the FBI, September 2005, they  
11 asked me if I'd be willing to cooperate and make tape  
12 recordings. I said, "Most certainly," you know. "This  
13 industry is not right."

14 THE COURT: Now, were you still making ice then?

15 MR. MOWERY: We were still making and distributing  
16 ice.

17 I made phone calls, like I say, in a number of states. I  
18 talked to 20 different ice companies, and there's probably  
19 tape recordings on maybe ten different ice companies, and  
20 pretty much they have all said, "Well, you know, we have a  
21 gentleman's agreement" -- or "We have agreement not to compete  
22 with other ice companies."

23 And a number of them have stated that, well, if I call --  
24 if my customer calls Home City, they'll refuse to take them  
25 on, and vice versa.

1 As we were unable to make money in the ice industry, I  
2 tried to get out and I tried to get out with a little bit of  
3 honor. I contacted a number of different ice companies to see  
4 if they'd be willing to buy us and nobody was interested.

5 THE COURT: Well, I thought that you had an offer of  
6 \$600,000 at one time.

7 MR. MOWERY: We did have an offer of \$600,000.

8 THE COURT: And that you sold it for 480-something?

9 MR. MOWERY: Ultimately we accepted 450,000.

10 I didn't want to sell the company. You know, at \$600,000  
11 -- not that it was a dollar amount that was important; I just  
12 didn't want to sell it to a competitor that was forcing us  
13 out.

14 My family was very upset that I didn't. Our offer expired  
15 a week or two later. I called Home City and said if we could  
16 come to terms on some other issues, I'd be willing to sell it.  
17 And they said, "Well, our offer's been pulled. We no longer  
18 want to buy you." I said, "Okay." We're weren't gonna stay  
19 in the ice business.

20 We -- at that time I started contacting other companies to  
21 see if they would buy us. I contacted at this point Chuck  
22 Knowlton, who was an Arctic Glacier employee, and I  
23 tape-recorded his conversation for the Justice Department.  
24 And Mr. Knowlton said that we could not -- Arctic Glacier  
25 would not buy us because we are in Home City's territory.