

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Case No.: 17-30673
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675
Chapter 11 Case

Debtor.

NOTICE OF HEARING AND MOTION FOR ORDER (I) GRANTING AN EXPEDITED HEARING, AND (II) ESTABLISHING PROCEDURES FOR THE RESOLUTION OF RECLAMATION CLAIMS AND ADMINISTRATIVE CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE

TO: The Office of the United States Trustee and Other Parties in Interest as Specified in Local Rule 9013.

1. The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 1:30 p.m. on March 14, 2017 in Courtroom No. 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Local Rule 9006-1(b) provides deadlines for responses to this Motion. However, given the expedited nature of the relief sought, the Debtors do not object to written responses being served and filed two (2) hours before the hearing. **UNLESS A RESPONSE OPPOSING**

THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 1070-1 and 1073-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The petitions commencing these chapter 11 cases were filed on March 10, 2017 (the “Filing Date”). The cases are currently pending in this Court.

5. This Motion arises under sections 105(a) and 362 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Bankruptcy Rule 9019(a) for resolution of the rights and priorities of the prepetition sellers of goods (collectively, the “Sellers”) asserting entitlements under sections 546(c) (“Reclamation Claims”) and/or 503(b)(9) (the “Twenty Day Claims”) of the Bankruptcy Code.

6. The Debtors request authorization to implement and establish exclusive, global procedures for the reconciliation and treatment of all Reclamation Claims and Twenty Day Claims, (ii) authorizing the Debtors to conduct settlement negotiations to resolve Reclamation Claims and Twenty Day Claims, and (iii) enjoining Sellers pursuing payment of Reclamation Claims and Twenty Day Claims by alternative means. The Debtors submit that the comprehensive procedures proposed herein will provide an expeditious and efficient means for resolving what is expected to be numerous such prepetition claims from their many Sellers. The Debtors estimate that, in the 45 days prior to the Filing Date, they purchased goods (firearms, hunting and fishing sporting goods, athletic equipment, clothing, shoes and the like) from approximately 1300 suppliers.

BACKGROUND

7. On the Filing Date, the Debtors filed voluntary petitions for relief pursuant to chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

8. Additional general background information about the Debtors and the events leading up to the Filing Date is set forth in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions. The additional facts relevant to this motion set forth below are verified by Timothy G. Becker, as evidenced by the attached verification.

9. Prior to the Filing Date, in the ordinary course of the Debtors’ business, the Debtors purchased a variety of goods used in their operations (the “Goods”). As of the Filing Date, the Debtors were in possession of certain delivered Goods for which they had not made payment.

A. The Reclamation Claims

10. Before and since the Filing Date, the Debtors have received a small number of reclamation demands (the “Reclamation Demands”) from vendors (the “Sellers”) requesting that the Debtors return Goods that were delivered prior to the commencement of these chapter 11 cases. So far, the Debtors have received Reclamation Demands for approximately \$153,000 of Goods delivered. The Debtors anticipate there will be additional notices and demands made. The threat of reclamation negatively impacts the Debtors’ operations and reorganization efforts.

11. Maintaining normal business operations and avoiding costly and distracting litigation relating to Reclamation Claims is important at this stage of the Debtors’ chapter 11 cases. Debtors are moving expeditiously to sell their assets through one or more section 363

sales. Debtors need to focus all of their resources on these sales in order to maximize the value of these estates for the benefit of all stakeholders. If the Debtors are unable to establish and implement a uniform set of reclamation procedures to resolve Reclamation Claims, they could be faced with the prospect of simultaneously defending multiple reclamation adversary proceedings at a time when the Debtors need to focus on critical aspects of the sale process. Such a result could severely disrupt the Debtors' business operations during that period and interfere with the Debtors' restructuring efforts.

B. The Twenty Day Claims

12. Suppliers who delivered Goods to the Debtors in the ordinary course of business within the 20 days prior to the Filing Date also may assert that their claims should be allowed as administrative expenses pursuant to section 503(b)(9) of the Bankruptcy Code. Debtors estimate that approximately \$7.7 million in Goods was purchased in the 20 days prior to the Filing Date.

13. The Debtors anticipate that many Sellers may file Twenty Day Claims pursuant to section 503(b)(9) of the Bankruptcy Code. Additionally, the Debtors anticipate that Sellers may improperly file Twenty Day Claims for Goods that should have been received by the Debtors within the 20 days prior to the Filing Date, but were not, because third parties, such as shippers and warehousemen, have not delivered or released such goods to the Debtors for various reasons.

14. The Debtors anticipate there could be numerous inquiries and demands on the Debtors' staff and professionals as well as the initiation of piecemeal litigation in an effort to preserve parties' rights with respect to the Twenty Day Claims.

RELIEF REQUESTED

15. By this Motion, the Debtors seek an order (i) authorizing them to establish exclusive, global procedures for the reconciliation and determination of all Reclamation Claims

and Twenty Day Claims (the “Claims Procedures”), and (ii) prohibiting Sellers from (a) taking any action to reclaim or repossess Goods or recover or set aside the proceeds from the Debtors’ sale of Goods or (b) interfering with the delivery of Goods to the Debtors. The Claims Procedures will effectively and efficiently streamline the process of resolving Reclamation and Twenty Day Claims and permit the Debtors to focus on their business operations and restructuring efforts, while not prejudicing any Seller’s rights and priorities.

16. The Debtors propose the following Claims Procedures for processing and reconciling all Reclamation and Twenty Day Claims:

- a. Any Seller wishing to assert a Reclamation Claim and/or Twenty Day Claim (a “Claimant”) must complete a “Reclamation Claims” and/or “Twenty Day Claims” Form (the “Claims Form” substantially in the form attached hereto as Exhibit A). The Claimant must provide contact information for itself and its Counsel, a summary of the asserted Reclamation Claim and/or Twenty Day Claim, disclose whether it is asserting setoff or offset rights with respect to its Reclamation Claim and/or Twenty Day Claim, and provide supporting documents substantiating the amount, priority and type of Reclamation Claim and/or Twenty Day Claim.
- b. In addition to complying with the Claims Procedures, each Seller asserting a Reclamation Claim and/or Twenty Day Claim will bear the burden of proof with respect to supporting its Reclamation Claim under section 546(c) of the Bankruptcy Code and/or Twenty Day Claim under section 503(b)(9) of the Bankruptcy Code;
- (c) Any Seller asserting a Reclamation Claim and/or Twenty Day Claim must deliver a copy of its Claim Form on or before 60 calendar days after entry of the Order (the “Claim Deadline”) to: (1) the Debtors, c/o Eric R. Jacobson, Chief Administrative Officer and Chief Legal Officer, Gander Mountain Company, 180 East Fifth Street, Suite 1300, St. Paul, MN 55101; (2) Fredrikson & Byron, P.A. 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402, attention Clinton E. Cutler and Cynthia Moyer, as counsel to the Debtors; and following the expiration of the Claim Deadline, which shall serve as a bar date for asserting that a claim should receive reclamation or section 503(b)(9) rights, but shall not bar any such creditor from asserting a related or unrelated general unsecured claim, creditors shall be forever barred from seeking or asserting reclamation or section 503(b)(9) rights;
- (d) The Debtors shall send a copy of the Claim Form and the Order approving the Claims Procedures to each Seller who sold Goods to Debtors in the 45 days prior

to the Filing Date as identified on its computerized list of vendors of Goods and to any Seller who, prior to the entry of the Order, submitted or filed a reclamation demand, and/or section 503(b)(9) claim;

- (e) After receipt of the timely filed Reclamation Claim and/or Twenty Day Claim by a particular Claimant, and an opportunity to review such demands – including, without limitation, whether the demand is subordinate to the rights of a holder of security interest in the applicable Goods or the proceeds thereof but, absent further order of the Court, no later than 90 days after the Claim Deadline (the “Notice Deadline”), the Debtors shall file with the Court a notice (the “Notice”) (i) listing the Reclamation Claim and/or Twenty Day Claim, (ii) the amount, if any, that the Debtors have determined to be valid for each such Reclamation Claim and/or Twenty Day Claim, and (iii) the amount, if any, that the Debtors dispute for each such Reclamation Claim and/or Twenty Day Claim and the reason(s) for such objection. The Debtors shall serve the Notice on (i) the Claimant; (ii) the U.S. Trustee; (iii) counsel to Debtors’ pre-petition secured ABL and term loan lenders and DIP Loan lenders, (iv) counsel for any Official Committee of Unsecured Creditors; and (v) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1;
- (f) If the Debtors fail to file the Notice by the Notice Deadline, or at such later time as the Court may order, any Claimant may file a motion on its own behalf to seek relief with respect to its Reclamation Claim and/or Twenty Day Claim but, in no event, shall commence any such proceeding until the expiration of the Notice Deadline;
- (g) All Notice Parties shall have the right and opportunity to object to the proposed resolution or priority of any Reclamation Claim and/or Twenty Day Claim asserted in the Notice, as set forth therein (the “Notice Objection”);
- (h) Any Reclamation Claim and/or Twenty Day Claim included in the Notice as a valid claim and not the subject of a Notice Objection within 20 calendar days after service of the Notice shall be valid and resolved in the manner provided for in the Notice, provided that all issues relating to the treatment of any such allowed Reclamation Claim and/or Twenty Day claim shall be reserved for a later date;
- (i) By complying with the Claims Procedures, a Seller’s rights under section 546(c) of the Bankruptcy Code and/or 503(b)(9) of the Bankruptcy Code shall not be prejudiced or limited in any way by (i) such Seller’s failure from and after entry of the Order approving the Claims Procedures to (x) take, if applicable, any “self-help” measures with respect to the Goods subject to the Reclamation Claim and/or Twenty Day Claim, (y) institute an adversary proceeding or contested matter against the Debtors seeking to enforce its rights to reclamation, recovery of proceeds from the sale of Goods or otherwise under the statute(s) asserted by the Seller in support of its Reclamation Claim and/or Twenty Day Claim, or (z) continue to prosecute proceedings already commenced or (ii) the Debtors’

continued use, sale or shipment of the Goods that may be subject to a Reclamation Claim and/or Twenty Day Claim after the date on which such Reclamation Claim and/or Twenty Day Claim was duly perfected, provided, however, that by requesting and participating in the Claims Procedures the Debtors are not waiving any defense to a Reclamation Claim resulting from the failure of a Seller to timely comply with any requirement under section 546(c) to make a reclamation demand;

- (j) Notwithstanding and without limiting the foregoing, the Debtors are authorized but not required, to negotiate, with any Seller and to seek an agreement with any Seller to resolve its Reclamation Claim and/or Twenty Day Claim. If the Debtors and a Seller are able to agree on the validity and/or amount of the subject Reclamation Claim and/or Twenty Day Claim, the Debtors shall prepare a notice of settlement (the "Settlement Notice"), file it with the Court, and serve such Settlement Notice on the Notice Parties. The Notice Parties shall have 10 business days from service and filing of the Settlement Notice (the "Objection Deadline") to file with the Court an objection thereto (a "Settlement Objection"). Settlement Objections must be served so as to be received by the Debtors, the Debtors' counsel, the applicable Seller, and the non-objecting Notice Parties on or before the Objection Deadline;
- (k) If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the subject Reclamation Claim and/or Twenty Day Claim shall be resolved in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "Settlement Stipulation"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim and/or Twenty Day Claim shall be resolved in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of the Settlement Objection is reached within 60 calendar days after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors thereafter shall file a motion for the Court to resolve the Settlement Objection and the same shall be set for hearing;
- (l) In the event that (a) all or a portion of a Reclamation Claim and/or Twenty Day Claim is disputed and no consensual resolution is reached between the Debtors and the Claimant; (b) a Notice is filed by the Debtors, but a Notice Objection is filed and remains unresolved, or (c) a Settlement Notice is filed by the Debtors, but a Settlement Objection is filed and remains unresolved, then after a motion is filed for the Court to resolve the dispute, Notice Objection and/or Settlement Objection, but before a hearing on the motion takes place, the parties shall participate in a mediation, and if any such mediation is unsuccessful, the disputed claim shall be resolved by the Court after a hearing.

17. The Debtors propose that the foregoing Claims Procedures be the sole and exclusive method for the handling of any and all Reclamation Claims and Twenty Day Claims asserted against the Debtors. In particular, the Debtors request that, from and after entry of the Order approving the Claims Procedures, all Sellers be prohibited from taking any other action for the resolution or treatment of their Reclamation Claims and Twenty Day Claims, including, without limitation (a) commencing or continuing adversary proceedings or contested matters against the Debtors in connection with any Reclamation Claims or Twenty Day Claims; (b) seeking to obtain possession or payment in respect of any Goods, except as permitted by the Claims Procedures; (c) otherwise interfering with the delivery of any Goods to the Debtors. For the avoidance of doubt, by entering into the Claims Procedures and complying with the procedures set forth in the Claims Procedures, the Debtors are not waiving and do not intend to waive the protections of the automatic stay imposed by section 362 of the Bankruptcy Code.

EXPEDITED RELIEF

18. The Debtors request expedited relief on this motion. Previously and concurrently herewith the Debtors have scheduled and served a number of initial motions designed to facilitate an orderly transition to chapter 11. The granting of this motion on an expedited basis will minimize the disruptions to the Debtors' inventory system, enable the Debtors to continue their business without numerous separate interruptions from Sellers that will distract employees and the Debtors' advisors and take time away from the important tasks of this bankruptcy.

19. Pursuant to Local Rule 9013-2, this motion is verified and is accompanied by a Memorandum of Law, proposed order and proof of service.

20. Pursuant to Local Rule 9013-2, Debtors give notice that they may, if necessary call one or more of the following to testify regarding the facts set forth in this Motion: (a)

Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota, 55112; (b) James A. Bartholomew, the President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota, 55112; or (c) Eric R. Jacobsen, the Chief Administrative Officer and Chief Legal Officer for Gander Mountain Company and the Director and Secretary of Overton's, Inc., whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101.

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the following relief:

1. Granting expedited relief;
2. Authorizing the Debtors to implement and establish the exclusive, global Claims Procedures for the reconciliation and treatment of all Reclamation Claims and Twenty Day Claims;
3. Authorizing the Debtors to conduct settlement negotiations to resolve Reclamation Claims and Twenty Day Claims;
4. Enjoining Sellers pursuing payment of Reclamation Claims and Twenty Day Claims by alternative means; and
5. Granting such other and further relief as the Court deems just and equitable.

Respectfully submitted,

Dated: March 10, 2017

/e/ Cynthia A. Moyer

Clinton E. Cutler (#0158094)

Cynthia A. Moyer (#0211229)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

Sarah M. Olson (#0390238)

Steven R. Kinsella (#0392289)

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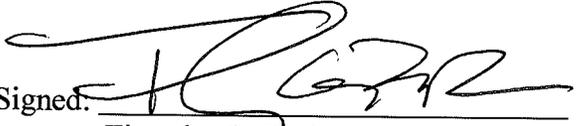
skinsella@fredlaw.com

PROPOSED ATTORNEYS FOR DEBTORS

VERIFICATION

I, Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the facts set forth in the preceding motion are true and correct according to the best of my knowledge, information, and belief.

Dated: March 10, 2017

Signed: 
Timothy G. Becker

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Case No.: 17-30673

Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675

Chapter 11 Case

Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN ORDER
(I) GRANTING AN EXPEDITED HEARING AND (II) AND (II) ESTABLISHING
PROCEDURES FOR THE RESOLUTION OF RECLAMATION CLAIMS AND
ADMINISTRATIVE CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE
BANKRUPTCY CODE**

Gander Mountain Company and Overton's, Inc. (together the "Debtors") submit this memorandum of law in support of the motion submitted herewith (the "Motion") in accordance with Local Rule 9013-2(a). The Debtors seek the entry of an order substantially in the form filed herewith (i) granting an expedited hearing, (ii) authorizing the Debtors to implement and establish exclusive, global procedures for the reconciliation and treatment of all Reclamation Claims and Twenty Day Claims, (ii) authorizing the Debtors to conduct settlement negotiations to resolve Reclamation Claims and Twenty Day Claims, and (iii) enjoining Sellers pursuing payment of Reclamation Claims and Twenty Day Claims by alternative means. This relief will eliminate the need for the Debtors to deal with numerous Reclamation Claims and Twenty Day

Claims at the start of the case and allow the Debtors to enter chapter 11 as smoothly as possible; therefore, the Court should grant the relief sought.

BACKGROUND

The supporting facts are set forth in the verified Motion. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

LEGAL ANALYSIS

I. THE DEBTORS' REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.

The Debtors request expedited relief on the Motion. Local Rule 9006-1(b) provides that “moving documents shall be filed and served . . . not later than fourteen days before the hearing date.” Local Rule 9006-1(e), however, provides that a court may reduce the notice for cause. Cause exists here to reduce notice of the hearing on this Motion. The relief sought herein is designed to ease the Debtors' transition into chapter 11 and minimize what could otherwise be numerous separate disruptions to Debtors' business operations. Given the Debtors' critical need to continue their operations uninterrupted, the Court should reduce the notice of the hearing on this Motion.

II. THE DEBTORS SHOULD BE AUTHORIZED TO IMPLEMENT THE CLAIMS PROCEDURES TO ADDRESS RECLAMATION CLAIMS AND TWENTY DAY CLAIMS.

Upon commencement of a chapter 11 case, reclamation rights are governed by section 546(c) of the Bankruptcy Code. Section 546(c) of the Bankruptcy Code provides in relevant part:

[S]ubject to the prior rights of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee . . . are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the commencement of a case under this title, but such seller

may not reclaim such goods unless such seller demands in writing reclamation of such goods (A) not later than 45 days after the date of receipt of such goods by the debtor; or (B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

11 U.S.C. § 546(c)(1). Accordingly, reclamation rights may exist only if the Debtors were insolvent when Goods were received. In addition, section 546(c)(1) of the Bankruptcy Code subordinates the rights of sellers of goods to the prior interests of secured parties. A secured lender that holds a floating lien on the debtor's property holds a security interest in all of the debtor's inventory such that "a reclaiming seller is entitled to a lien or administrative expense only to the extent that the value of the specific inventory in which the reclaiming seller asserts an interest exceeds the amount of the floating lien in the debtor's inventory." *In re Dana Corp.*, 367 B.R. 409, 419 (Bankr. S.D.N.Y. 2007) (quoting *In re Pittsburgh-Canfield Corp.*, 309 B.R. 277, 287 (6th Cir. B.A.P. 2004)); *In re Primary Health Sys. Inc.*, 258 B.R. 111, 117 (Bankr. D. Del. 2001). Further, a reclamation creditor, as an unsecured creditor, cannot invoke the equitable doctrine of marshalling. *In re Adv'd Marketing Serv. Inc.*, 360 B.R. 421, 427 (Bankr. D. Del. 2007).

As more fully described in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions filed contemporaneously herewith, Wells Fargo has a floating lien on all of the Debtors' inventory. Accordingly, resolving any Reclamation Demand will involve addressing whether the applicable Debtor was insolvent when the Goods were received and whether the interests of the Debtors' senior lender may be superior to those of the vendors asserting Reclamation Claims. Litigating these issues piecemeal during the critical early stages of these chapter 11 cases will be costly and distracting to the estates.

Also, many of the Debtors' vendors may seek administrative expense claims under § 503(b)(9) of the Bankruptcy Code. That section provides in relevant part:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including –

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under [title 11] in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9).

The Debtors expect that numerous Twenty Day Claims will be filed. In order to avoid piecemeal litigation, the Debtors seek to resolve all Twenty Day Claims through an orderly, uniform process. The establishment of uniform procedures for asserting Twenty Day Claims will also provide needed clarity to vendors.

Accordingly, the Debtors submit that implementation of the Claims Procedures as the sole and exclusive method for resolution of Reclamation Claims and Twenty Day Claims is justified. The Claims Procedures will effectively and efficiently streamline the process of resolving the Reclamation Claims and Twenty Day Claims for the Debtors and the vendors alike, without affecting the parties' substantive rights to pursue or contest the Reclamation and Twenty Day Claims.

Section 105(a) of the Bankruptcy Code provides that bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. *See* 11 U.S.C. § 105(a). Section 362 of the Bankruptcy Code further prohibits creditors from undertaking impermissible collection activities on account of debtor's pre-petition obligations. *See* 11 U.S.C. § 362. The Debtors submit that establishing and implementing the Claim Procedures is necessary and appropriate pursuant to sections 105(a) and 362 of the Bankruptcy Code. The Debtors believe the relief requested in this Motion is in the

best interests of the Debtors and their respective estates and assist in the consensual resolution of such claims, and ultimately the maximization of value for the Debtors, their estates and all of the parties in interest.

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that the Court grant the relief requested in the Motion.

Dated: March 10, 2017

/e/ Cynthia A. Moyer

Clinton E. Cutler (#0158094)

Cynthia A. Moyer (#0211229)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

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PROPOSED ATTORNEYS FOR DEBTORS

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Case No.: 17-30673

Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675

Chapter 11 Case

Debtor.

**ORDER GRANTING EXPEDITED RELIEF AND ESTABLISHING
PROCEDURES FOR THE RESOLUTION OF RECLAMATION
CLAIMS AND ADMINISTRATIVE CLAIMS ASSERTED
PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE**

These cases came before the court on the debtors' Motion for an Order (I) Granting Expedited Relief and (II) Establishing Procedures for the Resolution of Reclamation Claims and Administrative Claims Asserted Pursuant to Section 503(b)(9) of the Bankruptcy Code. Capitalized terms not defined in this order have the meanings ascribed to them in the Motion. Based on the Motion, all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The Motion, including the request for expedited relief, is granted.
2. The Debtors are authorized to resolve all Reclamation Claims and Twenty Day

Claims in accordance with the exclusive Claims Procedures set forth below, which are approved and authorized in their entirety:

- a. Any Seller wishing to assert a Reclamation Claim and/or Twenty Day Claim (a “Claimant”) must complete a “Reclamation Claims” and/or “Twenty Day Claims” Form (the “Claim Form,” substantially in the form attached hereto as Exhibit “A”). The Claimant must provide contact information for itself and its Counsel, a summary of its asserted Reclamation Claim and/or Twenty Day Claim, disclose whether it is asserting setoff or offset rights with respect to its Reclamation Claim and/or Twenty Day Claim, and provide supporting documents substantiating the amount, priority and type of Reclamation Claim and/or Twenty Day Claim;
- b. In addition to complying with the Claims Procedures, each Seller asserting a Reclamation Claim and/or Twenty Day Claim will bear the burden of proof with respect to supporting its Reclamation Claim under section 546(c) of the Bankruptcy Code and/or Twenty Day Claim under section 503(b)(9) of the Bankruptcy Code;
- c. Any Seller asserting a Reclamation Claim and/or Twenty Day Claim must deliver a copy of its Claim Form on or before 60 calendar days after entry of this Order (the “Claim Deadline”) to (1) the Debtors, c/o Eric R. Jacobson, Chief Administrative Officer and Chief Legal Officer, Gander Mountain Company, 180 East Fifth Street, Suite 1300, St. Paul, MN 55101; (2) Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402, attention Clinton E. Cutler and Cynthia Moyer, as counsel to the Debtors; and following expiration of the Claim Deadline, which shall serve as a bar date for asserting that a claim should receive reclamation and/or section 503(b)(9) rights, but shall not bar any such creditor from asserting a related or unrelated general unsecured claim, creditors shall be forever barred from seeking or asserting reclamation and/or section 503(b)(9) rights;
- d. The Debtors shall send a copy of the Claim Form and the Order approving the Claims Procedures to each Seller who sold Goods to Debtors in the 45 days prior to the Filing Date as identified on its computerized list of vendors of Goods, and to any Seller who, prior to entry of the Order, submitted or filed a reclamation demand and/or section 503(b)(9) claim;
- e. After receipt of the timely filed Reclamation Claim and/or Twenty Day Claim by a particular Claimant and an opportunity to review such demands — including, without limitation, whether the demand is subordinate to the rights of a holder of a security interest in the applicable Goods or the proceeds thereof but, absent further order of the Court, no later than 90 calendar days after the Claim Deadline (the “Notice Deadline”), the Debtors shall file with the Court a notice (the “Notice”) (i) listing the Reclamation Claim and/or Twenty Day Claim, (ii) the amount, if any, that the Debtors have determined to be valid for each such Reclamation Claim and/or Twenty Day Claim, and (iii) the amount, if any, that the Debtors dispute for each such Reclamation Claim and/or Twenty Day Claim and the reason(s) for such objection. The Debtors shall serve the Notice on: (i) the Claimant; (ii) the U.S. Trustee; (iii) counsel to Debtors’ pre-petition secured

ABL and term loan lenders and DIP Loan lenders; (iv) counsel for any Official Committee of Unsecured Creditors; and (v) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1;

- f. If the Debtors fail to file the Notice by the Notice Deadline, or at such later time as the Court may order, any Claimant may file a motion on its own behalf to seek relief with respect to its Reclamation Claim and/or Twenty Day Claim but, in no event, shall commence any such proceeding until the expiration of the Notice Deadline;
- g. All Notice Parties shall have the right and opportunity to object to the proposed resolution or priority of any Reclamation Claim and/or Twenty Day Claim asserted in a Notice, as set forth therein (the “Notice Objection”);
- h. Any Reclamation Claim and/or Twenty Day Claim included in the Notice as a valid claim and not the subject of a Notice Objection within 20 calendar days after service of the Notice shall be valid and resolved in the manner provided for in the Notice, provided that all issues relating to the treatment of any such allowed Reclamation Claim and/or Twenty Day Claim shall be reserved for a later date;
- i. By complying with the Claims Procedures, a Seller’s rights under section 546(c) of the Bankruptcy Code and/or 503(b)(9) of the Bankruptcy Code shall not be prejudiced or limited in any way by (i) such Seller’s failure from and after entry of the Order approving the Claims Procedures to (x) take, if applicable, any “self-help” measures with respect to the Goods subject to the Reclamation Claim and/or Twenty Day Claim, (y) institute an adversary proceeding or contested matter against the Debtors seeking to enforce its rights to reclamation, recovery of proceeds from the sale of Goods, or otherwise under the statute(s) asserted by the Seller in support of its Reclamation Claim and/or Twenty Day Claim, or (z) continue to prosecute proceedings already commenced or (ii) the Debtors’ continued use, sale, or shipment of the Goods that may be subject to a Reclamation Claim and/or Twenty Day Claim after the date on which such Reclamation Claim and/or Twenty Day Claim was duly perfected, provided, however, that by requesting and participating in the Claims Procedures the Debtors are not waiving any defense to a Reclamation Claim resulting from the failure of a Seller to timely comply with any requirement under section 546(c) to make a reclamation demand;
- j. Notwithstanding and without limiting the foregoing, the Debtors are authorized but not required, to negotiate, with any Seller and to seek an agreement with any Seller to resolve its Reclamation Claim and/or Twenty Day Claim. If the Debtors and a Seller are able to agree on the validity and/or amount of the subject Reclamation Claim and/or Twenty Day Claim, the Debtors shall prepare a notice of settlement (the “Settlement Notice”), file it with the Court, and serve such Settlement Notice on the Notice Parties. The Notice Parties shall have 10 business days from service and filing of the Settlement Notice (the “Objection Deadline”) to file with the Court an objection thereto (a “Settlement Objection”).

Settlement Objections must be served so as to be received by the Debtors, the Debtors' counsel, the applicable Seller, and the non-objecting Notice Parties on or before the Objection Deadline;

- k. If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the subject Reclamation Claim and/or Twenty Day Claim shall be resolved in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "Settlement Stipulation"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim and/or Twenty Day Claim shall be resolved in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of a Settlement Objection is reached within 60 calendar days after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors thereafter shall file a motion for the Court to resolve the Settlement Objection and the same shall be set for hearing;
- l. In the event that (a) all or a portion of a Reclamation Claim and/or Twenty Day Claim is disputed and no consensual resolution is reached between the Debtors and the Claimant, (b) a Notice is filed by the Debtors, but a Notice Objection is filed and remains unresolved, or (c) a Settlement Notice is filed by the Debtors, but Settlement Objection is filed and remains unresolved, then after a motion is filed for the Court to resolve the dispute, Notice Objection and/or Settlement Objection, but before a hearing on the motion takes place, the parties shall participate in a mediation, and if such mediation is unsuccessful, the disputed claim shall be resolved by the Court after a hearing.
3. Participation in the Claim Procedures shall not prejudice (i) a Seller's right to challenge the amount of any postpetition payment made to the Seller, (ii) the Debtors' right to challenge the amount of any prepetition claims asserted by the Seller, and (iii) the Debtors' right to challenge the amount set forth in the Notice with respect to any Reclamation Claims and/or Twenty Day Claims.
4. The foregoing Claims Procedures are the sole and exclusive method for the resolution and payment of any and all Reclamation Claims and Twenty Day Claims asserted against the Debtors.

5. All Sellers are prohibited and stayed from taking any other action for the resolution or treatment of their Reclamation Claims and/or Twenty Day Claims, including, without limitation, (a) commencing adversary proceedings or contested matters against the Debtors in connection with any Reclamation Claims and/or Twenty Day Claims, (b) seeking to obtain possession of any Goods, except as permitted by the Claims Procedures, or (c) otherwise interfering with the delivery of any Goods to the Debtors.

6. By entering into the Claims Procedures and complying with the procedures set forth in the Claims Procedures, the Debtors are not waiving the protections of the automatic stay imposed by section 362 of the Bankruptcy Code.

7. All adversary proceedings and contested matters, whether currently pending or initiated in the future, in connection with any Reclamation Claim or Twenty Day Claims, except those proceedings initiated by the Debtors in accordance with these Claims Procedures, are stayed and any claims asserted therein shall be resolved exclusively pursuant to the Claims Procedures set forth herein, unless otherwise ordered by this Court.

8. Nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other order of this Court, regardless of whether such creditors have asserted Reclamation Claims and/or Twenty Day Claims.

9. Nothing contained herein or in the Motion shall be deemed a determination that any Reclamation Claim or Twenty Day Claim is valid, or entitled to an administrative expense claim (and, if so entitled, the time at which such claim should be paid) or replacement lien.

This Court retains jurisdiction to interpret and enforce this Order.

Dated: _____, 2017

Robert J. Kressel
United States Bankruptcy Judge