

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

In re:	Jointly Administered Under Case No. 17-30673 (MER)
Gander Mountain Company, Overton's, Inc.,	Case No. 17-30673 Case No. 17-30675
Debtors.	Chapter 11 Cases

**NOTICE OF HEARING AND MOTION PURSUANT TO
SECTION 105(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019
FOR AN ORDER APPROVING STIPULATION BETWEEN
DEBTORS AND AIG CORPORATION**

TO: The parties specified in Local Rule 9013-3(a)(2) and the parties identified on the attached service list.

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

2. The Court will hold a hearing on the Motion at **2:30 p.m.** on **June 28, 2017**, before the Honorable Michael E. Ridgway in **Courtroom 7 West at the United States Courthouse at 300 South Fourth Street, Minneapolis, Minnesota.**

3. Any response to this motion must be filed and served no later than **June 23, 2017**, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THIS 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, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petitions

commencing the Debtors' Chapter 11 cases were filed on March 10, 2017 (the "Filing Date"). The cases are now pending in this Court.

5. This Motion arises under section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the "Bankruptcy Code"). This Motion is filed under Fed. R. Bankr. P. 9019 and Local Rules 2002-1, 9013-1 and 9013-2. The Debtors request an order: (i) approving the stipulation between the Debtors and AIG (defined below) and (ii) granting such other relief as is just and proper.

General Background

6. On the Filing Date, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have continued to manage their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors has been appointed in these cases.

7. General information about the Debtors' businesses and the events leading up to the Filing Date can be found in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions [Docket No. 38].

Background Specific to Motion

8. National Union Fire Insurance Company of Pittsburgh, PA, a subsidiary of American International Group, Inc. ("AIG") and the Debtors (together with AIG, the "Parties") entered into a Stipulation for Limited Relief From Automatic Stay (the "Stipulation"). The Stipulation is attached as **Exhibit A**.¹ The Stipulation provides as follows:

¹ The Stipulation has been negotiated and agreed upon by the Debtors and AIG. The copy of the Stipulation attached as Exhibit A is an unexecuted copy of the Stipulation. If the Court approves the Stipulation, the Debtors and AIG will execute the Stipulation.

- Debtor Gander Mountain Company (“Gander Mountain”) is a named insured on AIG policy no. GL 440-63-54 (the “Policy”) for claims arising during the one year period beginning April 1, 2012 (the “Claims”).

- Gander Mountain alleges that it has tendered any and all Claims arising under the Policy to AIG, and that AIG previously accepted said tender and prior to the filing of these Chapter 11 cases, had been funding the defense of Gander Mountain, including paying the costs and fees associated with the defense of such Claims.

- The parties have agreed that upon approval of the Stipulation by the United States Bankruptcy Court for the District of Minnesota, AIG shall be authorized to resume paying all fees and costs incurred by firms representing Gander Mountain in connection with Claims implicating the Policy.

- The parties further agree that any such fees and costs shall be paid solely by AIG and not the Debtors, and that no firm or other service provider representing Gander Mountain in connection with any such Claim shall be required to submit fee applications or otherwise seek further Court authorization prior to being paid by AIG.

9. By entering into the Stipulation, AIG is not waiving and is expressly preserving all rights to arbitration that exist under the Policy or other policies and agreements it may have with the Debtors.

10. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a Memorandum, Proposed Order, and proof service.

11. Pursuant to Local Rule 9013-2(c), the Debtors give notice that it may, if necessary, call James A. Bartholomew, the President of Lighthouse Management Group, Inc., the

Chief Restructuring Officer, whose business address is 900 Long Lake Rd., Suite 180 New Brighton, Minnesota 55112 to testify regarding the facts set out in this Motion.

WHEREFORE, the Debtors respectfully request that the Court enter an order: (I) approving the stipulation between the Debtors and AIG; and (II) granting such other and further relief as the Court deems just and equitable.

Dated: June 7, 2017

/e/ Cynthia A. Moyer

Clinton E. Cutler (#0158094)

Cynthia A. Moyer (#211229)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

Sarah M. Olson (#0390238)

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ATTORNEYS FOR DEBTORS

VERIFICATION

I, James A. Bartholomew, am President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of Gander Mountain Company and Overton's, Inc. Based upon my personal information and belief, I 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: June 2, 2017

Signed: 
James A. Bartholomew

Exhibit A
(Stipulation)

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

In re:	Jointly Administered Under Case No. 17-30673 (MER)
Gander Mountain Company, Overton's, Inc.,	Case No. 17-30673 Case No. 17-30675
Debtors.	Chapter 11 Cases

STIPULATION FOR LIMITED RELIEF FROM AUTOMATIC STAY

This Stipulation is entered between National Union Fire Insurance Company of Pittsburgh, PA, a subsidiary of American International Group, Inc., on behalf of itself and its affiliates (“AIG”) and (2) Gander Mountain Company and Overton’s Inc. (the “Debtors,” and together with AIG, the “Parties”).

The Parties agree as follows:

1. Debtor Gander Mountain Company (“Gander Mountain”) is a named insured on AIG policy no. GL 440-63-54 (the “Policy”) for claims arising during the one year period beginning April 1, 2012 (the “Claims”).
2. Gander Mountain alleges that it has tendered any and all Claims arising under the Policy to AIG, and that AIG previously accepted said tender and prior to the filing of these chapter 11 cases, had been funding the defense of Gander Mountain, including paying the costs and fees associated with the defense of such Claims.
3. The Parties agree that upon approval of this Stipulation by the United States Bankruptcy Court for the District of Minnesota, AIG is authorized to resume paying all fees and

costs incurred by firms representing Gander Mountain in connection with Claims implicating the Policy.

4. The Parties further agree that any such fees and costs shall be paid solely by AIG or claims adjusting companies retained by it and not the Debtors, and that no firm or other service provider representing Gander Mountain in connection with any such Claim shall be required to submit fee applications or otherwise seek further Court authorization prior to being paid by AIG.

5. By entering this Stipulation, AIG is not waiving and is expressly preserving all rights to arbitration that exist under the Policy or other policies and agreements it may have entered into with the Debtors.

AGREED:

Dated: June ____, 2017

Michelle A. Levitt
Associate General Counsel
175 Water Street, 15th Floor
New York, New York 10038
Telephone: 212.458.6777
Michelle.levitt@aig.com

ATTORNEYS FOR AIG

Dated: June ____, 2017

Clinton E. Cutler (#0158094)
Cynthia A. Moyer (#211229)
Ryan T. Murphy (#0311972)
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ATTORNEYS FOR DEBTORS

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

In re:	Jointly Administered Under Case No. 17-30673 (MER)
Gander Mountain Company, Overton's, Inc.,	Case No. 17-30673 Case No. 17-30675
Debtors.	Chapter 11 Cases

**DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF MOTION PURSUANT TO
SECTION 105(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019
FOR AN ORDER APPROVING STIPULATION BETWEEN DEBTORS AND AIG
CORPORATION**

INTRODUCTION

The above-referenced debtors (the "Debtors") submit this memorandum in support of their Motion for an Order Approving Stipulation Between the Debtors and American International Group, Inc. ("AIG") (the "Motion"). The Court should approve the Stipulation because it is in the best interests of the Debtors and the Debtors' bankruptcy estates. The Stipulation provides limited relief from the automatic stay found in 11 U.S.C. § 362 to allow AIG to resume paying all fees and costs incurred by firms defending the Debtors in connection with Claims implicating the Policy. Allowing AIG to pay defense counsel is in the best interests of the Debtors and the bankruptcy estates so that claims continue to be defended at no cost to the Debtors.

BACKGROUND

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

ARGUMENT

I. THE COURT SHOULD APPROVE THE STIPULATION BETWEEN THE DEBTORS AND AIG CORPORATION

Compromise is favored by the law as a normal part of the reorganization process. *In re Trism, Inc.*, 282 B.R. 662, 666 (B.A.P. 8th Cir. 2002). Rule 9019 of the Federal Rules of Bankruptcy Procedure provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a). Local Rule 2002-1(b) provides that unless ordered otherwise, service of notice of a compromise or settlement of a controversy shall be on the service list maintained by the clerk, and that service is being made as to this settlement.

“A decision to approve or disapprove a proposed settlement under Bankruptcy Rule 9019 is within the discretion of the bankruptcy judge.” *In re Trism, Inc.*, 282 B.R. at 666 (citing *In re Flight Transp. Corporate Sec. Litig.*, 730 F.2d 1128, 1135-36 (8th Cir. 1984)). Bankruptcy Rule 9019 vests a bankruptcy court with “broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate.” *In re Bates*, 211 B.R. 338, 343 (Bankr. D. Minn. 1997). In exercising its discretion, a court should consider the following factors:

- (1) The probability of success in the litigation;
- (2) The difficulties, if any, to be encountered in the matter of collection;
- (3) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it; [and]
- (4) The paramount interests of the creditors and a proper deference to their reasonable views in the premises.

In re Flight Transp. Corporate Sec. Litig., 730 F.2d at 1135-36 (citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929), and *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968)). More recently, a fifth factor has been added:

- (5) Whether the conclusion of the litigation promotes the integrity of the judicial system.

In re Bates, 211 B.R. at 343; *see also In re Farmland Indus., Inc.*, 289 B.R. 122 (B.A.P. 8th Cir. 2003) (suggesting that compromise should further the goals of bankruptcy — fairness, finality, integrity, and maximization of assets).

After consideration of these factors, a court can determine whether a settlement is “fair and equitable,” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. at 424, and in the best interests of the estate. *In re Trism, Inc.*, 282 B.R. at 668. A court’s function is not to ensure that the proposed settlement is the best possible settlement obtainable. Rather, the court must determine only whether the settlement falls below the lowest point on the range of reasonableness. *In re Hanson Indus., Inc.*, 88 B.R. 942, 945 (Bankr. D. Minn. 1988); *see also In re Teltronics Servs., Inc.*, 762 F.2d 185, 189 (2d Cir. 1985). The Stipulation between the Debtors and AIG satisfies all of the factors that the Court must consider in order to approve a stipulation under Bankruptcy Rule 9019.

In this instance, the Stipulation is not a traditional settlement but is nevertheless fair and equitable and in the best interest of the Debtors’ estates and should be approved. First, the Stipulation between AIG and the Debtors allows limited relief from stay solely to permit AIG to pay defense counsel and other litigation vendors representing Gander Mountain in connection with Claims covered by the Policy. The Debtors will not incur or otherwise be responsible for any costs or expenses directly. Second, Gander Mountain alleges that it has tendered any and all Claims arising under the Policy to AIG, and that AIG previously accepted the tender of any such

Claims. Prior to the filing of these Chapter 11 cases, AIG had been fully funding the defense of Gander Mountain, including paying the costs and fees associated with the defense of such Claims. It should be allowed to continue that post-petition. Third, the Stipulation provides an efficient and equitable way of ensuring the payment of all fees and costs incurred by firms representing Gander Mountain in connection with the Claims implicating the Policy. As noted above, the Stipulation also provides that any such fees and costs shall be paid solely by AIG and not the Debtors. Moreover, because payment will be coming from AIG, no firm or other service provider representing Gander Mountain in connection with any such Claim shall be required to submit fee applications or otherwise seek further Court authorization prior to being paid by AIG. And finally, by entering the Stipulation, AIG is not waiving and is expressly preserving all rights to arbitration that exist under the Policy or other agreements it may have with the Debtors. Thus, the interests of the Debtors' estates and creditors are best served by approving the Stipulation.

CONCLUSION

The factors recognized in the Eighth Circuit for the approval of compromises and settlements weigh in favor of the Court approving the Stipulation. Therefore, the Debtors respectfully request that the Court grant the Motion and enter an Order approving the Stipulation.

Dated: June 7, 2017

/e/ Cynthia A. Moyer

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Debtors. Chapter 11 Cases

**ORDER APPROVING STIPULATION BETWEEN DEBTORS AND AIG
CORPORATION**

This case came before the court on the Debtors' Motion for an Order Approving Stipulation between Debtors and AIG Corporation (the "Motion").

Based on the Motion, all files, records and proceedings herein:

IT IS HEREBY ORDERED:

1. The Motion is granted.
2. The Stipulation, attached as **Exhibit A** to the Motion, is hereby approved.

Dated:

Michael E. Ridgway
United States Bankruptcy Judge