

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

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

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**NOTICE OF HEARING AND MOTION OBJECTING TO CLAIM OF KEYBANK  
NATIONAL ASSOCIATION**

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TO: To the entities specified in Local Rule 3007-1.

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 **1:30 p.m. on February 14, 2018**, 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 **February 9, 2018**, pursuant to the applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules. **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, Bankruptcy Rule 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 11 U.S.C. § 502 and Bankruptcy Rule 3007 and Local Rule 3007-1. The motion is filed under Bankruptcy Rule 3007 and Local Rule 9013-1 to 9013-5. The Debtors request an order: (i) reducing the KeyBank Claim (defined below) from \$2,133,333.00 to \$1,590,866.89; (ii) reclassifying the KeyBank Claim as a general unsecured claim; and (iii) granting such other relief as is just and proper.

### **GENERAL BACKGROUND**

6. On the Filing Date, each of 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]. The Debtors remain debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases. On March 13, 2017, the Office of the United States Trustee (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors in these Cases pursuant to Section 1102 of the Bankruptcy Code (the "Committee").

### **BACKGROUND SPECIFIC TO MOTION**

#### **A. The KeyBank Claim.**

7. U.S. Bank, National Association ("U.S. Bank") and Gander Mountain Company ("GMC") entered into that certain Master Loan Agreement, dated July 26, 2013 ("Loan Agreement") pursuant to which U.S. Bank agreed to provide financing to GMC for the purchase of certain retail store furniture, fixtures and equipment.

8. As provided for under the Loan Agreement, U.S. Bank and GMC entered into a series of financing agreements and executed a Schedule to Loan Agreement for each such agreement. U.S. Bank originated ten Schedules under the Loan Agreement. It assigned six (6) of the Schedules to other various lenders (including KeyBank) and retained four (4) Schedules.

9. U.S. Bank and KeyBank National Association (“KeyBank”) entered into a Master Assignment Agreement/Promissory Note dated July 30, 2004, as amended (the “Assignment Agreement”). Pursuant to the Assignment Agreement, U.S. Bank, as assignor, agreed to sell and assign to KeyBank, as assignee, U.S. Bank’s right in certain Schedules, and the security interest in the collateral related to those Schedules.

10. On or about October 6, 2014, by and through a Specification of Assigned Interest and pursuant to the terms of the Assignment Agreement, U.S. Bank assigned and sold to KeyBank one (1) of the Assigned Schedules (the “KeyBank Schedule”).

11. Pursuant to the Master Loan Agreement and the Schedules, GMC granted U.S. Bank a security interest in the retail store furniture, fixtures and equipment purchased with the loan proceeds to secure GMC’s obligations under the applicable Schedule.

12. To secure its obligations under the KeyBank Schedule, GMC granted U.S. Bank security interests in certain retail store furniture, fixtures and equipment at the following locations (collectively, the “KeyBank Collateral”):

| <b>Store Number</b> | <b>Schedule Number</b> | <b>Store Location</b> |
|---------------------|------------------------|-----------------------|
| 112                 | 109                    | Waukesha, WI          |
| 155                 | 109                    | Janesville, WI        |
| 171                 | 109                    | Utica, MI             |
| 192                 | 109                    | Columbus, OH          |
| 287                 | 109                    | Joliet, IL            |
| 334                 | 109                    | Monroe, NC            |
| 391                 | 109                    | Bowling Green, KY     |
| 490                 | 109                    | Hermantown, MN        |

The locations identified above are referred to herein as the “KeyBank Locations.”

13. U.S. Bank filed a UCC-1 financing statement with the Minnesota Secretary of State on September 29, 2014, as Filing No. 201438061511 (the “UCC Filing”). Pursuant to the

Master Assignment Agreement and the Specification of Assigned Interest, U.S. Bank assigned its interests in the UCC Filing to KeyBank, as evidenced by UCC-3 Filing No. 20143833229 filed on October 23, 2014 with the Minnesota Secretary of State.

14. Claim 2.8 on Schedule D of the Debtors' Schedules of Assets and Liabilities [Doc. No. 428] identifies a secured claim held by Key Equipment Finance Inc., an affiliate of KeyBank, in the amount of \$2,133,333.00 (the "KeyBank Claim"). The KeyBank Claim was not scheduled as disputed, contingent, or unliquidated. The value of the collateral was undetermined at the time and therefore the portion of the KeyBank Claim entitled to status as a secured claim was unknown.

15. Pursuant to Federal Rule of Bankruptcy Procedure 3003(b), the schedule of liabilities filed pursuant to § 521(1) of the Bankruptcy Code constitutes prima facie evidence of the validity and amount of claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. Rule 3003(b) further provides: "It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule."

16. KeyBank has not filed a proof of claim in these Cases.

**B. Adequate Protection of the KeyBank Claim.**

17. On May 5, 2017, the Court entered an Amended Order Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests [Doc. No. 700] (the "Agency Approval Order"). The Agency Approval Order authorized the Debtors to enter into an Agency Agreement (the "Agency Agreement"), a form of which is attached to the Agency Approval Order, pursuant to which the Agent (as defined in the Agency Agreement) was authorized to act as the Debtors' exclusive agent to conduct sales of

certain of the Debtors' assets, including, without limitation, certain of the Debtors' inventory and other assets. The Agency Approval Order authorized the Debtors to sell the KeyBank Collateral under certain circumstances, including upon the agreement of the parties.

18. On May 3, 2017, KeyBank filed a Motion For Adequate Protection [Doc. No. 679], requesting adequate protection of its interest in the KeyBank Collateral.

19. On May 26, 2017, the Court entered an Order [Doc. No. 868] approving a Stipulation For Adequate Protection between the Debtors and KeyBank [Doc. No 864] (the "Adequate Protection Stipulation"). Pursuant to the Adequate Protection Stipulation, KeyBank agreed to the sale of the KeyBank Collateral free and clear. The Adequate Protection Stipulation further provided, among other things, that:

- a. The Debtors would make certain adequate protection payments to KeyBank (the "Adequate Protection Payments");
- b. The Debtors would deposit a percentage of the net proceeds of the sale of furniture, fixtures and equipment at KeyBank Locations (the "Net KeyBank Proceeds") into a segregated account and KeyBank's security interest in the KeyBank Collateral would attach to the Net KeyBank Proceeds;
- c. If no "Challenge" (as defined in the Adequate Protection Stipulation) to the validity and priority of KeyBank's security interests was commenced by July 10, 2017, the Debtors would thereafter distribute the Net KeyBank Proceeds to KeyBank.

20. No party in interest commenced a Challenge to the validity and priority of KeyBank's security interests in the KeyBank Collateral or the Net KeyBank Proceeds.

21. The Debtors timely made the Adequate Protection Payments to KeyBank in the aggregate amount of \$28,000.

22. All of the furniture, fixtures and equipment at the KeyBank Locations – and therefore all of the KeyBank Collateral – has been sold. On November 8, 2017, the Debtors paid the Net KeyBank Proceeds totaling \$520,771.59 to KeyBank.

**C. Status of the KeyBank Claim.**

23. Pursuant to the Adequate Protection Stipulation, the parties stipulated that, as of the Petition Date, the outstanding amount owing to KeyBank as of the Petition Date was \$2,139,638.48.

24. The remaining unpaid amount of the KeyBank Claim is \$1,590,866.89, calculated as follows:

|  |                       |
|--|-----------------------|
| Due as of Petition Date:                   | \$2,139,638.48        |
| <i>Less:</i> Adequate Protection Payments: | -\$28,000.00          |
| <i>Less:</i> Net KeyBank Proceeds:         | <u>-\$520,771.59</u>  |
|  | <b>\$1,590,866.89</b> |

**RELIEF REQUESTED**

25. The Debtors seek an order (i) reducing the KeyBank Claim to \$1,590,866.89; (ii) reclassifying the KeyBank Claim as a general unsecured claim; and (iii) granting such other relief as is just and proper.

**CONCLUSION**

26. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a memorandum of law, a proposed order, and proof of service.

27. Pursuant to Local Rule 9013-2(c), the 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 or (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.

WHEREFORE, the Debtors respectfully request that the Court enter an order:

- A. Reducing the KeyBank Claim to \$1,590,866.89;
- B. Reclassifying the KeyBank Claim as a general unsecured claim;
- C. Such other and further relief as the Court deems just and equitable.

Dated: January 12, 2017

*/e/ James C. Brand*

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Clinton E. Cutler (#0158094)  
Cynthia A. Moyer (#0211229)  
Ryan T. Murphy (#0311972)  
James C. Brand (#387362)  
Sarah M. Olson (#0390238)  
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**ATTORNEYS FOR DEBTORS**

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**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: Jan. 12, 2018

Signed: 

Timothy G. Becker



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

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

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**MEMORANDUM IN SUPPORT OF MOTION OBJECTING TO CLAIM OF KEYBANK  
NATIONAL ASSOCIATION**

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The above-captioned debtors (the "Debtors"), as debtors in possession, object to the claim of KeyBank National Association. They move the Court for entry of an order reducing claim 2.8 on Schedule D of the Debtors' Schedules of Assets and Liability and reclassifying it as a general unsecured claim. The supporting facts are set forth in the verified Motion. All capitalized terms have the meaning ascribed to them in the Motion.

**ANALYSIS**

A claim is only allowable to the extent that it is enforceable against the debtor. 11 U.S.C. § 502(b)(1). In determining whether to allow a claim, the court applies the applicable non-bankruptcy law. *E.g., In re Eastview Estates II*, 713 F.2d 443, 448 (9th Cir. 1983).

KeyBank's collateral has been liquidated and it has received payments during the case. It has received \$520,771.59 in proceeds from the liquidation of collateral and \$28,000 of adequate protection payments. KeyBank's claim must be reduced to reflect its receipt of such payments.

**CONCLUSION**

The Debtors respectfully request that the Court grant the Motion.

Dated: January 12, 2018

*/e/ James C. Brand*

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Clinton E. Cutler (#0158094)  
Cynthia A. Moyer (#0211229)  
Ryan T. Murphy (#0311972)  
James C. Brand (#387362)  
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**ATTORNEYS FOR DEBTORS**

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| In re:                                       | Jointly Administered Under<br>Case No. 17-30673 (MER) |
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| Debtors.                                     | Chapter 11 Cases                                      |

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**ORDER GRANTING MOTION OBJECTING TO CLAIM**

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This matter is before the court on the Motion Objecting to Claim (the "Motion") filed by the above-captioned debtors (the "Debtors"). Based on the Motion and all papers filed by the Debtors in support of the Motion, all the files, records, and proceedings, herein,

IT IS HEREBY ORDERED:

1. The Motion is granted.
2. Claim 2.8 on Schedule D of the Debtors' Schedules of Assets and Liabilities [Doc. No. 428] is hereby reclassified as a general unsecured claim and allowed in the reduced amount of \$1,590,866.89.

Dated:

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Michael E. Ridgway  
United States Bankruptcy Judge