

**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

LIMITED OBJECTION TO CONFIRMATION OF JOINT PLAN OF LIQUIDATION

Grundens USA, Ltd. ("**Grundens**") hereby objects to one aspect of the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation dated October 31, 2017 (as amended, the "**Plan**").

Grundens properly and timely gave notice of a reclamation claim against the Debtors in the amount of \$374,477.51, and complied in all respects with the Court's Claims Procedures Order (Dkt. No. 211). The Debtors' Statement of Reclamation and Twenty Day Claims filed herein, originally as Docket No. 1242 and thereafter supplemented and updated (collectively the "**Debtors' Reclamation Statement**") purported to disallow Grundens' reclamation claim, and all other reclamation claims, on the ground that they "ha[ve] no value." *Id.*, p. 4, n. 1.¹ Grundens timely objected to the Debtors' Reclamation Statement. Dkt. No. 1261. Numerous other objections followed. All such objections asserted first priority administrative claims in lieu of receipt of actual goods.

¹ Although the Debtors asserted other defenses to some of the other reclamation claims, the only defense they have ever identified to Grundens' claim is that there were senior secured creditors. As set forth in Grundens' and others' prior pleadings, that defense is not supported by the facts in this case and does not withstand analysis.

The Debtors and the Committee have reached an agreement to resolve the reclamation claims post confirmation. This is permissible *only* if there is enough money to pay the reclamation claims in full if their claims are later allowed. The Plan and accompanying Disclosure Statement provide no such assurance.

The Debtors contend there will be sufficient funds on hand post-confirmation that the reclamation claims can be paid in full, if allowed. That may or may not be true. The Debtors' liquidation analysis demonstrates that *if* there is enough money to go around, it is *barely* enough, even after collection of the questionable noncash assets – with eight figure administrative claims absorbing well over half the cash in the estate before the reclamation claims are even considered. The Debtors' apparent strategy is to wait to address allowance and payment of the reclamation claims until after the Debtors pay their professionals and all other administrative claims in full in the near future, when there is a high likelihood that there will not be enough money left to pay the reclamation claimants all they are owed.

That violates Section 1129(a)(9)(A), and it unfairly discriminates against the reclamation claimants relative to other holders of administrative claims. The Plan as currently written cannot be confirmed.

There are two solutions that could satisfy the Bankruptcy Code, neither of which the Debtors have proposed. First, the Debtors could segregate \$12.7 million, the total amount of reclamation claims, thus ensuring sufficient funds would be available to satisfy the allowed reclamation claims on the effective date of the plan in accordance with Section 1129(a)(9)(A). Second, the Debtors could postpone the confirmation hearing until the reclamation claims are decided, whether by litigation or by agreement (and with or without the mediation called for

under the Claims Procedures Order).² What the Debtors cannot do, given the facts of this case, is push the reclamation claimants back in time and back into second priority behind all other administrative claims.

Faced with the Debtors' unconfirmable Plan, Grundens has voted against the Plan and objects to confirmation for the reasons stated herein. If the process for segregation of money or resolution of reclamation claims is modified to address these objections, Grundens will withdraw this opposition and request a change of vote.

Dated: January 16, 2018

Respectfully submitted,

/s/ Michael A. Rosow

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² The theoretical third solution would be for the Debtors to demonstrate a sufficient cushion to ensure payment in full of all administrative claims. The facts do not support that approach here.