

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: Case No. 17-30673 (Jointly Administered)

Gander Mountain Company,  
Overton's, Inc.

Chapter 11

Debtor.

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**Objection of Creditors Darrell (Jay) Tibbets, et al. to Debtors' and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Liquidation Dated October 31, 2017**

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TO: The Debtor, the Debtor's counsel, the Official Committee of Unsecured Creditors, the Creditors' Committee counsel, and all other parties in interest.

Darrell (Jay) Tibbets, Joseph Fusaro, Michael Kalck, Ronald J. Stoupa, Robert Walker, Eric Jacobsen, and Brian Kohlbeck (collectively "Key Executives") through their undersigned counsel, do hereby submit the following objection to the confirmation of the Debtors' and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Liquidation Dated October 31, 2017.

**LEGAL ARGUMENT**

- a. Failure for the Plan to provide a mechanism for addressing post-petition administrative claims of Key Employees retained by the Debtor to maximize the value of the estate.**

Following the filing of the Chapter 11 bankruptcy, the Debtor and the Official Committee of Unsecured Creditors ("Creditors Committee") deemed it to be in the best interests of the reorganizing Debtor to retain the services of a number of key employees, which include those that have joined in this objection. For purposes of enhancing the value of the bankruptcy estate, the Debtor and the Creditors Committee negotiated and subsequently entered into either a Key Employee Incentive Plan ("KEIP") or a Key Employee Retention Plan ("KERP") with each of the Key Executives. Both types of agreements were submitted to the Court on motion of the Debtors

(See Docket No. 28) and subsequently approved by this Court per Court Order dated April 14, 2018 (See Docket No. 436).

The KEIP and KERP agreements were negotiated and signed on a post-petition basis. As part of the incentive and retention bonus pay for each of the Key Executives, there were a number of thresholds, targets, “stretches”, and maximum performance criteria that would determine the amount of the post-petition bonus payments to be made to each of the Key Executives. One of the targets set forth in the KEIP agreements would require the Debtor to pay to each of the Key Executives an amount equal to 25% of their base salaries if “(i) the cash or value of all of the property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the company’s plan of reorganization and/or liquidation the plan is equal to or exceeds 5%; and at least 35 stores are sold or transferred by the Company to one or more parties, and it is contemplated at the time of such transaction that such stores will be operated as retail stores under one or more trade names selling sporting goods, with a prominent or seasonal emphasis on hunting, camping, fishing, shooting, marine, or outdoor recreational products (“a Going Concern Sale”). The KEIP and KERP agreements were subsequently amended per agreement dated May 25, 2017.

As this case has progressed, to enhance the Debtor’s reorganization efforts, and to preserve the estate for the benefit of all creditors, including unsecured creditors, the Key Executives agreed to expend their best efforts to accomplish the targets recited above to assure unsecured creditors that they would receive at least a 5% distribution as part of the plan of reorganization, and that at least 35 of the Gander Mountain stores would be opened and operated by CWI Inc. (a/k/a Camping World), the purchaser of certain assets approved by the court on May 4, 2017 [Docket Number 691].

To date, CWI has transitioned 17 of the Gander Mountain stores into fully operating retail outlets consistent with the provisions of the Key Employee Incentive Plan. Currently, CWI is attempting to negotiate favorable terms on a number of other Gander Mountain leases that according to recently issued press releases will result in an additional 18 or more stores being transitioned and opened by CWI. In the event the total of all stores transitioned by CWI to ongoing and operating retail centers consistent with the target provision set forth above would entitle the Key Executives to receive additional bonus compensation in the aggregate sum of \$625,000.00.

Each of the Key Executives filed a proof of claim with the Bankruptcy Court on December 17 and 18, 2018 (See Claims Register-Claims Nos. 21491, 21492, 21493, 21494, 21495, 21496, and 21497).

The Plan makes no mention of this bonus compensation which has been, and continues to be, an integral part of the reorganization process. As a result of this omission, the Plan should not be confirmed inasmuch as it fails to provide information regarding, or a mechanism to resolve, the administrative claims the Key Executives have filed against the estate, i.e. those to be asserted by the Key Executives, fails to provide information regarding the additional amount of compensation to be paid to these Key Executives, fails to make any mention of these claimants in the Plan, and fails to provide an adequate estimate of all administrative expenses, never mind those associated with the Key Executive claims. As a result of the foregoing, confirmation of the Plan should be denied, or the Plan should be amended to address the claims of the Key Executives, regardless of whether the Debtors or the Official Committee of Unsecured Creditors assert that each of the claims are disputed, unliquidated, or contingent.

11 U.S.C. Sec. 1123 of the Bankruptcy Code requires inclusion of the following:

- (1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;

(2) Specify any class of claims or interests that is not impaired under the plan;

(3) Specify the treatment of any class of claims or interests that is impaired under the plan;

The Plan is silent as to the claims that have been filed on behalf of each of the Key Executives and, therefore, confirmation of the Plan in its present form should be denied, or, in the alternative, amended so that it provides for a mechanism for addressing each of the post-petition administrative claims outside of the confirmation process.

### CONCLUSION

Pursuant to the foregoing arguments the Court should deny confirmation of the Plan or require that it be amended and include a provision for establishing a legal mechanism to address each of the claims outside of the confirmation process.

Respectfully submitted,

ANASTASI JELLUM, P.A.

Dated: January 18, 2018

/s/ T. Chris Stewart

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