

**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

**MOTION FOR ORDER APPROVING SETTLEMENT WITH BANK OF AMERICA
N.A., BANC OF AMERICA MERCHANT SERVICES, LLC, AND FIRST DATA
SERVICES, LLC**

TO: The parties specified in Local Rule 9013-3(a)(2) and the parties identified on the certificate of 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 **10:30 a.m.** on **March 7, 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 **March 2, 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 “Petition Date”).

The cases are now pending in this Court.

5. This Motion is filed under Bankruptcy Rule 9019 and Local Rules 2002-1, 9013-1, and 9013-2. The Debtors request an order approving the Stipulation Regarding Application of Reserve between the Debtors and Bank of America N.A. (“Bank”), Banc of America Merchant Services, LLC (“Merchant Services”), and First Data Services, LLC (“FDS” and together with Bank and Merchant Services, “BAMS”) attached as Exhibit A (the “Settlement Agreement”).¹ The Debtors have been informed that the Official Committee of Unsecured Creditors and Liquidating Trustee support approval of the Settlement Agreement. In fact, if the “Effective Date” of the Debtors’ and Official Committee of Unsecured Creditors’ Joint Plan of Liquidation Dated October 31, 2017 [dkt. no. 1359] occurs before an order is entered approving the Motion, the Debtors understand that the Liquidating Trustee would succeed the Debtors as the “movant” and seek the relief requested.

6. The Debtors and BAMS are parties to a Merchant Agreement and a Gift Card Agreement, and BAMS holds a \$2,000,000 reserve. BAMS provided services pre-petition and post-petition to the Debtors under those agreements. Pursuant to the terms of the Settlement Agreement, the parties agree that (i) post-petition unpaid charges in the amount of approximately \$230,000 and half of the pre-petition charges that total approximately \$65,000 would be satisfied from the \$2,000,000 reserve; (ii) \$120,000 from the existing reserve would be held by BAMS for 9 months to satisfy any future charges under the Merchant Agreement with any unused portion returned to the Debtors; (iii) the balance of the reserve, which totals approximately \$1,600,000, would be returned to the Debtors in two installments—50% upon execution of the Settlement Agreement and 50% upon approval of the Settlement Agreement by the Bankruptcy Court; (iv) BAMS would hold an allowed general unsecured claim for the unpaid pre-petition charges in the

¹ Unless otherwise defined in this Motion, all capitalized terms have the meaning ascribed to them in the Settlement Agreement.

amount of \$32,392.07; (v) the agreements between the Debtors and BAMS would be rejected and BAMS would not file a claim for any rejection damages; and (v) the parties would waive any and all claims except for the continuing obligations under the Settlement Agreement. The Debtors request that the Court approve the Settlement Agreement because it is in the best interest of the Debtors, their estates, and the creditors of those estates.

GENERAL BACKGROUND

7. On the Petition Date, each of the Debtors filed petitions commencing the Debtors' chapter 11 cases. A description of the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions [dkt. no. 38].

8. The Debtors filed the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation Dated October 31, 2017 [dkt. no. 1359] (as modified, amended or supplemented from time to time in accordance with its terms, the "Plan").

9. The Bankruptcy Court entered the Findings of Fact, Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation Dated October 31, 2017 [dkt. no. 1572] (the "Confirmation Order").

10. Pursuant to the terms of the Plan, "on the Effective Date, the Debtors and the Liquidating Trustee shall enter into the Liquidating Trust Agreement. Additionally, on the Effective Date, the Debtors irrevocably shall transfer and shall be deemed to have transferred to the Liquidating Trust all right, title and interest in and to the Liquidating Trust Assets in accordance with the Plan." (Plan § IV(B).)

11. Pursuant to the terms of the Plan, the "Liquidating Trust Assets" means the assets held in the Liquidating Trust comprised of (i) all Causes of Action of the Debtors, including,

without limitation, any and all Causes of Action for which the Creditors' Committee was granted standing and authority to prosecute, resolve, settle, and compromise in the Chapter 11 Cases, but excluding those expressly waived herein, and (ii) all other unencumbered assets of the Debtors' Estates remaining after all required payments have been made pursuant to the Plan, Confirmation Order, and Liquidating Trust Agreement, as applicable, on the Effective Date." (Plan § I(54).)

12. The Debtors contemplate that the Effective Date of the Plan shall occur in February 2018.

13. Pursuant to the terms of the Plan, "[w]ithin five (5) Business Days of the Effective date, notice of the Effective Date shall be filed in the Bankruptcy Court." (Plan § I (38).)

14. If the "Effective Date" of the Plan occurs before an order is entered approving the Motion, the Debtors understand that the Liquidating Trustee would succeed the Debtors as the "movant" and seek the relief requested.

BACKGROUND SPECIFIC TO MOTION

15. BAMS and Debtors are parties to certain agreements whereby BAMS provided certain services to the Debtors before and after the Petition Date. Specifically, BAMS provided (i) credit card processing services to the Debtors pursuant to that certain Merchant Services Agreement dated as of September 12, 2005 (as amended, the "Merchant Agreement") and (ii) gift card production and processing services to the Debtors pursuant to that certain Stored Value Gift Card Processing Agreement dated as of September 9, 2005 (as amended, the "Gift Card Agreement").

16. Prior to the Petition Date, in accordance with the terms of the Merchant Agreement, BAMS established a reserve account in the amount of \$2,000,000 (the "Reserve") to

provide credit protection with respect to chargebacks, adjustments, fees and other charges that may become due from Debtors to BAMS from time to time pursuant to the terms of the Merchant Agreement (collectively, the “Charges”). Under the terms of the Merchant Agreement, BAMS is authorized to apply the Reserve to satisfy all Charges that may arise under the Merchant Agreement.

17. BAMS has provided the Debtors accounting supporting \$41,952.22 in Charges arising under the Merchant Agreement through December 31, 2017.

18. In addition, BAMS invoiced Debtors \$64,784.14 on account of gift card production and processing services that it provided to Debtors prior to the Petition Date. After the Petition Date, BAMS continued to provide gift card production and processing services to Debtor pursuant to the Gift Card Agreement and invoiced the Debtors \$187,198.31 for those services.

19. BAMS has asserted setoff and recoupment rights with respect to the Reserve by seeking to apply the Reserve to all Charges and other amounts that are currently due and owing to BAMS under the Merchant Agreement and the Gift Card Agreement. BAMS has also asserted that the unapplied balance of the Reserve should continue to be held to provide credit protection with respect to Charges that may become due from Debtors to BAMS from time to time.

20. The Debtors and BAMS engaged in negotiations with respect to the Reserve and the application thereof to the Charges and the unpaid gift card invoices and ultimately reached a resolution memorialized in the Settlement Agreement, which is attached as **Exhibit A**. The terms of the Settlement Agreement include the following:

- a. The following amounts will be paid to BAMS from the Reserve once the settlement has been approved by the Bankruptcy Court: (i) \$41,952.22 in chargebacks and third party fees arising under the Merchant Agreement; (ii) \$187,198.31 in post-petition gift card invoices under the Gift Card Agreement; and (iii) \$32,392.07 in prepetition gift card invoices under the Gift Card Agreement—half of the claimed pre-petition amount.
 - b. \$120,000 from the existing Reserve would be held by BAMS for a 9 month period following the effective date of the settlement. Upon 5 days' written notice to the Debtors or Liquidating Trustee and no objection, any additional charges would be paid from the Reserve. Any portion of the Reserve that remains unused at the end of the 9 month period would be returned to the Liquidating Trustee.
 - c. The balance of the reserve (\$1,618,457.40) would be returned to Debtors in two installments: 50% upon execution of the Settlement Agreement and 50% upon approval of the settlement by the Bankruptcy Court.
 - d. The Merchant Agreement and Gift Card Agreement with BAMS would be rejected and BAMS would not file a claim for any rejection damages.
 - e. The parties would release each other from all claims relating to the Reserve, Merchant Agreement, and Gift Card Agreement, except for the parties' continuing obligations under the Settlement Agreement.
 - f. The Bankruptcy Court's retention of exclusive jurisdiction to resolve any disputes or controversies related to the Settlement Agreement.
21. The resolution as memorialized in the Settlement Agreement is within the range of potential outcomes that could result if the Debtors pursued claims and defenses, including as

to BAMS' claim that the pre-petition obligations are secured by the Reserve. In addition, the estates realize significant benefits by resolving the matter. The estates will obtain release of more than \$1.6 million in funds before or upon Court approval. The Debtors have negotiated an agreement to pay only 50% of the approximately \$65,000 pre-petition claim BAMS asserts is secured by the Reserve, and obtained a waiver of any damages arising from the rejection of the Merchant Agreement or Gift Card Agreement. Finally, the Debtors have realized these benefits without incurring additional costs associated with litigation and the attendant risk of liability for BAMS' attorneys' fees and costs under the Merchant Agreement and Gift Card Agreement.

22. The Debtors have discussed the Settlement Agreement with the advisors to the Official Committee of Unsecured Creditors and Liquidating Trustee and have been informed that both support the Settlement Agreement.

RELIEF REQUESTED

23. The Debtors seek an order approving the Settlement Agreement, whereby (i) post-petition unpaid charges in the amount of approximately \$230,000 and half of the pre-petition charges that total approximately \$65,000 would be satisfied from the \$2,000,000 reserve; (ii) \$120,000 from the existing reserve would be held by BAMS for 9 months to satisfy any future charges under the Merchant Agreement with any unused portion returned to the Debtors; (iii) the balance of the reserve, which totals approximately \$1,600,000, would be returned to the Debtors in two installments—50% upon execution of the Settlement Agreement and 50% upon approval of the Settlement Agreement by the Bankruptcy Court; (iv) BAMS would hold an allowed general unsecured claim for the unpaid pre-petition charges in the amount of \$32,392.07; (v) the agreements with BAMS would be rejected and BAMS would not file a claim for rejection

damages; and (v) the parties would waive any and all claims except for the continuing obligations under the Settlement Agreement.

24. The legal basis for the relief requested is set forth in the accompanying Memorandum of Law.

CONCLUSION

25. 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.

26. 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 copy of which is attached hereto:

- A. Approving this Motion and authorizing the Debtors to enter into the Settlement Agreement; and
- B. Granting such other and further relief as the Court deems just and equitable.

Dated: February 7, 2018

/e/ Ryan Murphy

Clinton E. Cutler (#0158094)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

Sarah M. Olson (#0390238)

Steven R. Kinsella (#0392289)

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ATTORNEYS FOR DEBTORS

62767337.2

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: 2/6, 2018

Signed: 

Timothy G. Becker

EXHIBIT A

SETTLEMENT AGREEMENT

**UNITED STATES BANKRUPTCY COURT
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 REGARDING APPLICATION OF RESERVE

Gander Mountain Company ("Gander Mountain") and the other debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), on the one hand, and Bank of America N.A. ("Bank"), Banc of America Merchant Services, LLC ("Merchant Services"), and First Data Services, LLC ("FDS" and together with Bank and Merchant Services, "BAMS" and, together with the Debtors, the "Parties"), on the other, hereby stipulate and agree (this "Stipulation") as follows:

RECITALS

WHEREAS, on March 10, 2017 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), thereby commencing these Chapter 11 Cases in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court");

WHEREAS, both prior to and after the Petition Date, BAMS provided (i) credit card processing services to the Debtors pursuant to that certain Merchant Services Agreement dated as of September 12, 2005 (as amended, the "Merchant Agreement") and (ii) gift card production and processing services to the Debtors pursuant to that certain Stored Value Gift Card Processing Agreement dated as of September 9, 2005 (as amended, the "Gift Card Agreement"); and

WHEREAS, prior to the Petition Date, in accordance with the terms of the Merchant Agreement, BAMS established a reserve account in the amount of \$2,000,000 (the "Reserve") to provide credit protection with respect to chargebacks, adjustments, fees and other charges that may become due from Gander Mountain to BAMS from time to time pursuant to the terms of the Merchant Agreement (collectively, the "Charges"); and

WHEREAS, pursuant to the terms of the Merchant Agreement, BAMS is authorized to apply the Reserve to satisfy all Charges that may arise under the Merchant Agreement; and

WHEREAS, BAMS is owed \$64,784.14 on account of gift card production and processing services that it provided to Gander Mountain prior to the Petition Date; and

WHEREAS, following the Petition Date, BAMS continued to provide gift card production and processing services to Gander Mountain pursuant to the Gift Card Agreement; and

WHEREAS, BAMS is owed \$187,198.31 on account of gift card production and processing services that it provided to Gander Mountain following the Petition Date; and

WHEREAS, BAMS is owed \$41,952.22 on account of Charges arising under the Merchant Agreement through December 31, 2017; and

WHEREAS, BAMS has asserted setoff and recoupment rights with respect to the Reserve by seeking to apply the Reserve to all Charges and other amounts that are currently due and owing to BAMS under the Merchant Agreement and the Gift Card Agreement; and

WHEREAS, the Debtors and BAMS have engaged in negotiations with respect to the Reserve and the application thereof to the Charges and the unpaid gift card invoices; and

WHEREAS, the Debtors filed the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation Dated October 31, 2017 [dkt. no. 1359] (as modified, amended or supplemented from time to time in accordance with its terms, the "Plan"); and

WHEREAS, the Bankruptcy Court entered the Findings of Fact, Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation Dated October 31, 2017 [dkt. no. 1572] (the "Confirmation Order"); and

WHEREAS, pursuant to the terms of the Plan, "on the Effective Date, the Debtors and the Liquidating Trustee shall enter into the Liquidating Trust Agreement. Additionally, on the Effective Date, the Debtors irrevocably shall transfer and shall be deemed to have transferred to the Liquidating Trust all right, title and interest in and to the Liquidating Trust Assets in accordance with the Plan" (Plan § IV(B)); and

WHEREAS, pursuant to the terms of the Plan, the "*Liquidating Trust Assets*" means the assets held in the Liquidating Trust comprised of (i) all Causes of Action of the Debtors, including, without limitation, any and all Causes of Action for which the Creditors' Committee was granted standing and authority to prosecute, resolve, settle, and compromise in the Chapter 11 Cases, but excluding those expressly waived herein, and (ii) all other unencumbered assets of the Debtors' Estates remaining after all required payments have been made pursuant to the Plan, Confirmation Order, and Liquidating Trust Agreement, as applicable, on the Effective Date" (Plan § I(54)); and

WHEREAS, the Debtors contemplate that the Effective Date of the Plan shall occur in February 2018;

WHEREAS, pursuant to the terms of the Plan, “[w]ithin five (5) Business Days of the Effective date, notice of the Effective Date shall be filed in the Bankruptcy Court” (Plan § I (38)).

NOW, THEREFORE, subject to the approval of this Stipulation by the Bankruptcy Court, it is hereby stipulated and agreed by and between the Parties as follows:

1. The recitals set forth above are incorporated herein as though set forth at length below.
2. Within three (3) business days of execution of this Stipulation by the Parties, BAMS shall return \$809,228.70 from the Reserve to Gander Mountain, without setoff or recoupment, by wire transfer in accordance with instructions to be provided by Gander Mountain.
3. Upon approval of this Stipulation by the Bankruptcy Court, (i) BAMS shall be permitted to apply the Reserve to irrevocably satisfy the Charges and unpaid gift card invoices in the total amount of \$261,542.60, consisting of (a) \$41,952.22 in Charges arising under the Merchant Agreement through December 31, 2017, (b) \$187,198.31 in post-petition gift card invoices, and (c) \$32,392.07 in pre-petition gift card invoices; (ii) BAMS shall be deemed to hold an allowed general unsecured claim against the Debtors’ estates in the amount of \$32,392.07; and (iii) BAMS shall return an additional \$809,228.70 from the Reserve to Gander Mountain, without setoff or recoupment, by wire transfer in accordance with instructions provided by Gander Mountain.
4. Subject to paragraphs 5 and 6 of this Stipulation, BAMS shall be permitted to retain \$120,000.00 from the Reserve (the “Remaining Reserve”) for a nine month period following the approval of this Stipulation by the Bankruptcy Court (the “Review Period”) to

secure the payment of any additional Charges, excluding penalties and liquidated damages, that may arise during the Review Period (the "Future Charges").

5. During the Review Period, (a) BAMS shall evaluate the Remaining Reserve on a monthly basis to determine whether any portion thereof should be released to the Debtors or Liquidating Trustee, as applicable, in accordance with the terms of the Merchant Agreement, (b) BAMS shall provide the Debtors or, after the Effective Date, the Liquidating Trustee, with written notice and an accounting of any Future Charges, (c) BAMS shall be permitted to apply the Remaining Reserve to Future Charges, if any, to the extent of such Future Charges if neither the Debtors or Liquidating Trustee dispute application of the Remaining Reserve to the Future Charges within five (5) days of receipt of written notice thereof, and (d) BAMS and the Debtors or Liquidating Trustee, as applicable, shall work in good faith to resolve any disputes relating to Future Charges and the Remaining Reserve.

6. BAMS shall return to Gander Mountain or Liquidating Trustee, as applicable, the balance of the Remaining Reserve remaining after the payment of all Future Charges, if any, no later than ten (10) business days following the end of the Review Period, provided that as of such date there is no pending dispute between BAMS and the Debtors or Liquidating Trustee, as applicable, with respect to any Future Charges.

7. In the event of a dispute with respect to BAMS's application of any portion of the Remaining Reserve or any Future Charges, BAMS and Debtors or Liquidating Trustee, as applicable, each reserve their respective rights to seek a determination of any such dispute by the Bankruptcy Court. BAMS shall continue to hold the amount of any disputed portion of the Remaining Reserve until final resolution of any such dispute, and shall return (i) the undisputed portion of the Remaining Reserve to Gander Mountain or Liquidating Trustee, as applicable,

within ten (10) business days following the end of the Review Period, and (ii) the unapplied balance of the Remaining Reserve, if any, within ten (10) business days following the resolution of such dispute by order of the Bankruptcy Court or agreement of the Parties.

8. Upon the Bankruptcy Court's approval of this Stipulation, the Debtors and their estates shall be deemed to have released BAMS from any and all claims that the Debtors or their estates may have against BAMS with respect to any payments or other transfers made to BAMS under the terms of the Merchant Agreement, the Gift Card Agreement, this Stipulation or any other agreement between the Debtor and BAMS, including but not limited to, any such payments made to BAMS before the Petition Date or during the Chapter 11 Cases, which release shall be binding on any successor to the Debtors, including, without limitation, the Liquidating Trustee. For the avoidance of doubt, such release shall not apply to any of BAMS's obligations (i) under this Stipulation or (ii) relating to the Remaining Reserve or any Future Charges.

9. Upon the Bankruptcy Court's approval of this Stipulation, BAMS shall be deemed to have released the Debtors and their estates from any and all claims that BAMS may have against the Debtors or their estates with respect to the Merchant Agreement, the Gift Card Agreement, this Stipulation, or any other agreement between the Debtors and BAMS, which release shall be binding on any successor to BAMS. For the avoidance of doubt, such release shall not apply to any of Debtors' agreements or obligations (i) under this Stipulation or (ii) relating to the Remaining Reserve or any Future Charges.

10. Upon Bankruptcy Court's approval of this Stipulation, the Merchant Agreement, Gift Card Agreement and any other agreement between the Debtors and BAMS shall be deemed rejected pursuant to 11 U.S.C. § 365(g). Pursuant to paragraph 9 of this Stipulation, BAMS shall

be deemed to have released the Debtors and their estates from any and all claims that BAMS may have against the Debtors or their estates with respect to the rejection of any such agreement.

11. This Stipulation constitutes the complete agreement of the Parties and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Parties, and approved by the Bankruptcy Court.

12. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

13. This Stipulation is subject to approval of the Bankruptcy Court, and the Parties agree to present the Stipulation to the Bankruptcy Court in the most expeditious manner possible.

14. This Stipulation shall be binding on the Parties hereto and all of their successors and assignees, including but not limited to, the Liquidating Trustee.

15. The Parties agree that the Bankruptcy Court shall retain jurisdiction to resolve any dispute arising from or related to this Stipulation.

5th

STIPULATED and AGREED to this 2nd day of February 2018.

By: Ryan Murphy
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Counsel for BAMS

**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

**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER APPROVING
SETTLEMENT WITH BANK OF AMERICA N.A., BANC OF AMERICA MERCHANT
SERVICES, LLC, AND FIRST DATA SERVICES, LLC**

The above-captioned debtors (the “Debtors”), as debtors in possession, move the Court for entry of an order approving a settlement. The supporting facts are set forth in the verified Motion. All capitalized terms have the meaning ascribed to them in the Motion or Settlement Agreement. The Court should grant the relief requested because the proposed Settlement Agreement is in the best interests of the parties, including the Debtors’ estates and creditors. Moreover, the Debtors have been informed that the Committee and Liquidating Trustee support the settlement.

ANALYSIS

THE COURT SHOULD APPROVE THE SETTLEMENT AGREEMENT.

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). The Bankruptcy Rules provide that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “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. Corp. 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) “[t]he probability of success in the litigation”;
- (2) “[t]he difficulties, if any, to be encountered in the matter of collection”;
- (3) “[t]he complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it”; and
- (4) “[t]he paramount interests of the creditors and a proper deference to their reasonable views in the premises.”

In re Flight Transportation Corporate Securities Litigation, 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, 424-25 (1968)). More recently, a fifth factor has been added:

- (5) “[w]hether 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” and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. at 424; *In re Trism, Inc.*, 282 B.R. at 668. The 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).

The resolution embodied in the Settlement Agreement is fair and reasonable and is in the best interests of the estates and their creditors. The disputes between the Debtors and BAMS are complex, would be time consuming and expensive to litigate, and involve substantial risks and uncertainty.

a. Probability of Success.

The Debtors believe they have a reasonable probability of success in the litigation concerning whether the pre-petition obligations relating to the Gift Card Agreement are secured by the Reserve. The benefit, however, of success on that position is limited because of the limited amount in dispute—approximately \$65,000. Moreover, a significant portion of the post-petition claims are expressly secured by the Reserve, and the Debtors have a statutory obligation to pay post-petition administrative expense claims. While there may be some basis to argue that certain of the approximately \$230,000 in charges did not benefit the estates, the Debtors have assessed that the persuasiveness of those arguments are limited. In addition, there is a risk that BAMS may seek and be awarded its fees and costs, as may be allowed under the Merchant Agreement and Gift Card Agreement. Accordingly, the Settlement Agreement appropriately reflects the probability of success by paying post-petition claims of BAMS, “splitting-the-baby” on the pre-petition claim, and obtaining a release of the vast majority of the remaining Reserve by or upon Court approval with any unapplied balance released within 9 months.

b. Difficulty of Collection.

This factor did not influence the Debtors’ decision to enter into the Settlement Agreement. To the extent this factor applies, it supports approval of the Settlement Agreement

because a significant portion of BAMS' claims are expressly secured by the Reserve, and it resolves the dispute over whether the pre-petition charges that BAMS argues is secured by paying 50% of that claim from the Reserve with the balance constituting an unsecured claim.

c. Complexity, Expense, Inconvenience, and Delay of Litigation.

The Settlement Agreement provides certainty and reduces the administrative costs that would be expended by the estates to litigate the issues. While the Debtors are prepared to litigate these issues, the estates realize a two-fold benefit from reaching a settlement now. First, the estates will not be required to incur the substantial expense of litigation, thereby increasing recoveries for unsecured creditors. Second, by realizing a release of more than \$1.6 million upon Court approval of the settlement and avoiding the inevitable delays and risks caused by litigation, unsecured creditors will have more assets available for an earlier distribution.

d. The Paramount Interest of the Creditors.

The Debtors have discussed the Settlement Agreement with the advisors to the Committee and Liquidating Trustee and understand that they both support the Settlement Agreement. The Settlement Agreement achieves a good result without incurring substantial administrative costs and is consistent with the creditors' interests in this case.

e. The Integrity of the Judicial System.

This matter does not involve a situation where the integrity of the judicial system is jeopardized by the terms of the settlement, as was argued to be the case in *In re Bates*. See *In re Bates*, 211 B.R. at 345-348 (discussing the circumstances when a complaint seeking revocation of discharge under § 727 may be settled). However, the judicial system has an interest in the outcome and the manner in which it was reached. The parties have been forthright regarding their respective claims and defenses. The parties have negotiated, and reached a settlement in

good faith. Moreover, in reaching that settlement, the Debtors have sought and obtained the approval of the Committee and Liquidating Trustee. Such a process and final result as embodied in the Settlement Agreement respects the integrity of the judicial system and affirms its role in overseeing and approving the compromise of claims belonging to the estates. As noted in *In re Bates*, “the law favors compromise.” *Id.* at 343 (citing *Lindquist v. First Northtown Nat’l Bank (In re Lakeland Dev. Corp.)*, 48 B.R. 85, 90 (Bankr. D. Minn. 1985).

CONCLUSION

The Settlement Agreement is “fair and equitable” and in the best interests of the estates. An analysis of the relevant factors shows that the result is within the range of possible outcomes, removes significant claims, eliminates risks, reduces administrative expenses, and avoids delay. The result is supported by the Official Committee of Unsecured Creditors and Liquidating Trustee and promotes the goals of the judicial system. The Debtors respectfully request that the Court grant the Motion.

Dated: February 7, 2018

/e/ Ryan Murphy

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**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

ORDER APPROVING SETTLEMENT WITH BANK OF AMERICA N.A., BANC OF AMERICA MERCHANT SERVICES, LLC, AND FIRST DATA SERVICES, LLC

This matter is before the court on the Motion for Order Approving Settlement with Bank of America N.A., Banc of America Merchant Services, LLC, and First Data Services, LLC (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, the Court finds that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (d) appropriate, proper, and adequate notice of the Motion was given under the circumstances and no other or further notice is necessary, (e) no objection to the Motion was filed, (f) the settlement represents a good faith, arms-length compromise of disputed issues of law and fact, (g) the settlement is fair, equitable, and in the best interests of the Debtors and their estates and their creditors, (h) the Official Committee of Unsecured Creditors and Liquidating Trustee support the settlement, (i) the legal and factual bases set forth in the Motion establish just cause for the relief granted, and (j) good cause exists to approve the Motion and Stipulation Regarding Application of Reserve without further notice or hearing,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth herein.
2. The Stipulation Regarding Application of Reserve is approved.

Dated:

Michael E. Ridgway
United States Bankruptcy Judge