

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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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

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**JOINT STATEMENT OF THE LIQUIDATING TRUSTEE AND  
MAGPUL INDUSTRIES CORP. CONCERNING RECLAMATION CLAIM**

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1. The Gander Mountain Creditors' Liquidating Trust, through META Advisors, LLC, in its capacity as the liquidating trustee ("Liquidating Trustee"), and Magpul Industries Corp. ("Magpul"), by and through their respective undersigned counsel, respectfully submit this Joint Statement:

2. This Joint Statement is filed pursuant to the Court's Order, dated March 22, 2018 (ECF No. 1659), directing the Liquidating Trustee and Magpul to file a statement setting forth the legal issues, and disputed factual issues, if any, concerning Magpul's asserted reclamation claim, and to advise the Court whether the parties consent to mediation.

3. The parties agree that Magpul timely submitted its *Reclamation Claims and/or Twenty Day Claims Form*, dated May 12, 2017 (the "Magpul Reclamation Claim"), in accordance with the Court's *Amended Order Granting Expedited Relief and Establishing Procedures for the Resolution of Reclamation Claims and Administrative Claims Asserted Pursuant to Section 503(B)(9) of the Bankruptcy Code* (ECF No. 211) (the "Procedures Order").

4. Through the Magpul Reclamation Claim, Magpul asserted a reclamation claim in the amount of \$584,449.53. The parties agree that this reclamation claim amount is inclusive of

Magpul's asserted Section 503(b)(9) claim in the amount of \$73,191.43. Accordingly, Magpul's net reclamation claim, after accounting for its Section 503(b)(9) claim, is equal to \$511,948.68.

**Factual Issues**

5. The Liquidating Trustee submits that there are no factual issues in dispute.
6. Magpul submits that there are no factual issues in dispute.

**Legal Issues**

7. The Liquidating Trustee submits the following legal issues are in dispute:
  - a. Whether because the value of the Prepetition Secured Obligations<sup>1</sup> exceeded the value of goods encumbered by the Prepetition Senior Liens in the Debtors' inventory (including the goods subject to Magpul's Reclamation Claim) as of the Petition Date, Magpul's reclamation rights were rendered valueless.
  - b. Whether the DIP Credit Parties were required to marshal the DIP Collateral so as to satisfy the DIP Obligations first from the Debtors' DIP Collateral that did not include the goods that are the subject of Magpul's Reclamation Claim, notwithstanding that Paragraph 39 of the DIP Order provides that the DIP Credit Parties shall not be subject to the equitable doctrine of marshalling.
  - c. Whether the Debtors' use of proceeds from the DIP Facility to satisfy the Debtors' Prepetition Secured Obligations extinguished Magpul's reclamation rights.

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Court's *Final Order Pursuant to 11 U.S.C. § § 105, 361, 362, 363, 364 and 507 (I) Approving Postpetition Financing; (II) Granting Liens and Providing Superpriority Administrative Expenses Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (ECF No. 443) (the "DIP Order").

- d. Whether the DIP Liens granted to the DIP Credit Parties under the DIP Facility primed any reclamation rights asserted by Magpul, rendering Magpul's reclamation claims valueless.
  - e. Whether, following the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, as applicable to Bankruptcy Code § 546(c), the Court has the authority to grant Magpul an administrative expense claim on account of the portion of the Magpul Reclamation Claim that is in excess of the amount of its Section 503(b)(9) claim.
8. Magpul submits that the following legal issues are in dispute:
- a. Whether the Magpul subordinate lien rights as a reclamation creditor under Minnesota law survived satisfaction of the Prepetition Secured Obligations and the granting of the DIP Liens to the DIP Credit Parties.
  - b. Whether the DIP Liens were extinguished by satisfaction of the DIP Obligations.
  - c. Whether the Magpul subordinate lien rights entitle Magpul to an administrative priority claim payable from the surplus proceeds from sale of the Prepetition Collateral where all senior liens in Prepetition Collateral have been satisfied.

### **Mediation**

9. The Liquidation Trustee agrees to participate in mediation to resolve the Magpul Reclamation Claim. The Liquidation Trustee further submits that Paragraph 2.1. of the Procedures Order requires the parties to participate in mediation prior to any hearing concerning disputed reclamation claims, and only if such mediation is unsuccessful, will the Court resolve any remaining disputes.

10. Magpul will participate in mediation if so directed by the Court. Magpul views mediation as a further unnecessary delay and a waste of time and professional fees. Settlement discussions have been unproductive. Magpul is prepared to immediately proceed by Court adjudication of the pending motion.

Dated: April 6, 2018

Respectfully Submitted,

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