

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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<p>In Re:</p> <p>Gander Mountain Company, Overton's, Inc.,</p> <p>Debtors.</p>	<p>Jointly Administrated Under Case No. 17-30673 (MER)</p> <p>Case No. 17-30673 Case No. 17-30675</p> <p>Chapter 11 Cases</p>
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**NOTICE OF HEARING AND MOTION OF CZ-USA FOR AN ORDER ALLOWING  
RECLAMATION CLAIM AS AN ADMINISTRATIVE EXPENSE CLAIM**

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TO: THE DEBTORS AND OTHER ENTITIES SPECIFIED IN LOCAL RULE 9013-3:

1. CZ-USA ("CZ"), a Nevada corporation, by and through its undersigned counsel, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **1:30 p.m. on Wednesday, May 9, 2018**, before the Honorable Michael E. Ridgway, in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis Minnesota, 55415.

3. Any response to this motion must be filed and served by **May 4, 2018** which is five (5) days before the time set for the hearing (including intermediate Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O). The petitions commencing the Debtors' Chapter 11 cases were filed on March 10, 2017, and these cases are now pending in this Court.

5. This motion arises under 11 U.S.C. § 365(d)(3) and 503(b)(1)(A). This motion is

filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9006-1, 9013-1, and 9013-2.

6. Pursuant to this Motion, CZ requests an order allowing CZ's \$295,690.00 reclamation claim as an administrative expense claim under 11 U.S.C. § 503(b)(1)(A) based on a valid, timely reclamation made by CZ in accordance with the Claims Procedure Orders and as an actual, necessary cost and expense of preserving the Debtors' estate.

### **FACTS**

7. On March 10, 2017 (the "Petition Date"), the Debtors filed a voluntary petition for relief in this Court under Chapter 11 of the Bankruptcy Code. [Docket No. 1].

8. On March 15, 2017, this Court entered its 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 ("Claims Procedure Orders") [Docket No. 100].

9. On April 24, 2017, CZ-USA filed its general, unsecured proof of claim in the amount of \$353,798.26 [Claim 411-1].<sup>1</sup>

10. On or about April 24, 2017, CZ submitted its "Reclamation Claim" to the Debtors and other interested parties pursuant to the Court's Amended Claims Procedure Order in the amount of \$295,690.00 for goods delivered during the 21-45 day period immediately prior to the Petition Date [Docket No. 211].

11. The Debtors filed their Notice of Statement of Reclamation and Twenty-Day

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<sup>1</sup> The Liquidating Trustee's recent omnibus objection correctly noted the duplication existing with CZ's general unsecured and reclamation claims. [Docket No. 1684]. CZ intends to amend its general unsecured proof of claim, once CZ's reclamation claim is addressed.

Claims on September 20, 2017 (“Notice”), which challenged all one hundred and twenty-eight (128) then-filed Reclamation Claims, including CZ’s Reclamation claim, as invalid. [Docket No. 1242]. The only reason for the objection was the contention that the reclamation claim had no value “because the prepetition lenders’ interests and the DIP Agent’s interests in the Debtors’ assets, including the goods that are the subject of this Reclamation Claim, are superior to the Reclamation Claim” – citing caselaw from outside the district. [Docket No. 1242, PDF page 4, fn 1].

12. According to their original and Amended Disclosure Statements, the Debtors fully paid their prepetition secured creditors utilizing postpetition financing (“DIP Loans”). The Debtors have no outstanding amounts due and owing in connection with the pre-petition loans or DIP Loans. All other secured debt has been satisfied. [Docket Nos. 1360, 1427].

13. On October 3, 2017, CZ timely objected to the Notice and Debtors’ proposed treatment of the Reclamation Claim on the basis that, *inter alia*, the Debtors made no showing to support the allegations relating to the Debtors’ arrangements with its lenders and its DIP financing, the satisfaction of secured debt or the value of collateral in excess of debt, and the authorities cited by Debtors ignores established precedents in this district. [Docket No. 1281]. CZ also joined in the Objections filed by the Official Committee of Unsecured Creditors [Docket No. 1276]; and various other creditors [Docket Nos. 1261, 1264, and 1277].

14. Under the controlling authorities in this Circuit, creditors with valid reclamation claims are entitled to the return of their goods; or, where the Debtor has benefited from the sale or use of the goods for the benefit of the estate, are entitled to have the claims paid as administrative expenses.

WHEREFORE, CZ respectfully requests that the Court enter an order:

- a) allowing an administrative expense claim in favor of CZ-USA under 11 U.S.C. § 503(b)(1)(A) in the amount of \$295,690.00 and
- b) granting CZ-USA such other relief as the court deems proper.<sup>2</sup>

Dated: April 16, 2018

**WARNER LAW, LLC**

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*Attorneys for CZ-USA*

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<sup>2</sup> Alternatively, if this Motion is opposed, CZ-USA stands ready participate in mediation pursuant to paragraph 2.1. of the 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 [Docket No. 211] as the Court recently ordered in connection with the Sig Sauer and Mag Pul claims. [Docket 1694]

**VERIFICATION**

I, Lynn Matthews, declare under penalty of perjury that I am an officer of CZ-USA, an entity comprising the moving party named in the foregoing motion, that I have read the foregoing document, and that the facts described therein are true and correct according to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Signature  
  
Treasurer  
\_\_\_\_\_  
Officer

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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<p>In Re:</p> <p>Gander Mountain Company, Overton's, Inc.,</p> <p style="text-align: center;">Debtors.</p>	<p style="text-align: right;">Jointly Administrated Under Case No. 17-30673 (MER)</p> <p style="text-align: right;">Case No. 17-30673 Case No. 17-30675</p> <p style="text-align: right;">Chapter 11 Cases</p>
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**MEMORANDUM OF LAW**

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CZ-USA ("CZ"), through its undersigned counsel, submits this Memorandum of Law in support of its Motion for Allowance of Reclamation Claim as an Administrative Expense Claim ("Motion").

**FACTS**

The relevant facts are set forth in the Motion, which is incorporated herein by reference. Unless otherwise defined herein, all capitalized terms herein have the meanings given to them in the Motion.

**ARGUMENT**

***A. Reclamation Generally***

Both the creditor Magpul Industries, Corp., and the creditor Sig Sauer, Inc. already briefed the issue of treatment of reclamation claims as administrative expenses to this Court. [Docket Nos. 1482 and 1490, respectively]. The prior submissions are incorporated herein by reference. Reclamation is the right of a seller to take back certain goods sold on credit terms to an insolvent buyer. Reclamation is codified in Section 2-702(2) of the Uniform Commercial Code. In the bankruptcy realm, Section 546(c) of the Bankruptcy Code governs sellers' reclamation rights and

the reclamation process. 11 U.S.C. § 546(c). More specifically, (a) the goods must have been sold in the ordinary course of the business; (b) the debtor must have been insolvent on the date of delivery; and, (c) the seller must make a timely, written demand for reclamation. 11 U.S.C. § 546(c)(1).

***B. Administrative Status for CZ's Reclamation Claim***

Here, CZ cannot reclaim its goods because they were sold by the Debtors. In such instances, a seller is instead granted an administrative claim for the value of the good sold. *See, e.g., In re Pester Refining Company*, 964 F.2d 842 (8th Cir. 1992); *Griffin Retreading Company v. Oliver Rubber Company*, 795 F.2d 676 (8th Cir. 1986). The rationale is that the administrative expense claim, consistent with the reclamation right, provides additional protection to sellers who provided goods on the cusp of the debtor's filing. *Griffin* at 679.

***C. Opposition to Administrative Claim***

The opposition to administrative status of CZ's reclamation claim—indeed the “blanket” objection made to all reclamation claims—was that the prepetition lenders and DIP Agents had superior rights in the Debtors' assets making reclamation claims valueless. The cases cited in support are: *In re Dana Corp.*, 367 B.R.409 (Bankr.S.D.N.Y.2007) and *In re Dairy Mart Convenience Stores, Inc.*, 302 B.R. 128 (Bankr.S.D.N.Y.2003) (both holding where a DIP loan is used to pay the claims of prepetition lenders, the loan transactions are “integrated transactions,” relating the DIP loan back to the prepetition lender's lien and defeating any reclamation rights). But the *Dana* and *Dairy Mart* analysis was rejected in more recent decisions under the more rational theory that a lien's function is to secure a debt and once the debt is satisfied the lien, and lien-holder's rights, disappear. *See, e.g., In re Reichhold Holdings US, Inc.*, 556 B.R. 107, 111 (Bankr.D.Del. 2016). That is, when a DIP loan retires a prepetition loan, the prepetition lender's

lien is satisfied; but reclamation rights—since arise before the DIP lender’s security interest attaches—remain in force regardless whether a DIP lender satisfies a prepetition loan or obtains a lien in inventory. *Id.* Several authorities support this analysis. *See, e.g., In re Phar-Mor, Inc.*, 301 B.R. 482 (Bankr. N.D. Ohio 2003); *Phar-Mor, Inc. v. McKesson Corp.*, 534 F.3d 502 (6th Cir. 2008) (“[a] debtor’s decision to grant a security interest in inventory to a *subsequent* secured lender cannot defeat a seller’s reclamation rights if the seller asserted its rights before the security interest is granted.” 301 B.R. at 497 (emphasis in original)). Most significantly, Eighth Circuit precedent holds where a senior prepetition security interest is satisfied from a source other than directly from the goods subject to a reclamation right, reclamation creditors retain a priority interest in the remaining proceeds. *In re Pester*, 964 F.2nd at 848. *Pester* squarely supports the holdings in *Reichhold Holdings* and *Phar-mor* and should control in this district. *Id.*

### **CONCLUSION**

For the above reasons, CZ respectfully requests that its Motion be granted.

Dated: April 16, 2018

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**ORDER GRANTING MOTION FOR ALLOWANCE OF ADMINISTRATIVE  
EXPENSE CLAIM**

This matter came before the Court for hearing on CZ-USA's ("CZ") motion for allowance and payment of an administrative priority claim under 11 U.S.C. § 503(b)(1)(A). Appearances were noted on the record. Based on the arguments of counsel, all the files, records and proceedings herein, and the court being fully advised on the premises,

**IT IS ORDERED:**

CZ-USA's Motion for an Order Allowing Administrative Expense Claim on account of its reclamation claim in the amount of \$295,690.00 is granted.

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL E. RIDGEWAY  
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

<p>In Re:</p> <p>Gander Mountain Company, Overton's, Inc.,  Debtors.</p>	<p style="text-align: right;">Jointly Administrated Under Case No. 17-30673 (MER)</p> <p style="text-align: right;">Case No. 17-30673 Case No. 17-30675</p> <p style="text-align: right;">Chapter 11 Cases</p>
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**CERTIFICATE OF SERVICE**

I, George E. Warner, Jr., declare under penalty of perjury that on April 16, 2018 I served the following through ECF and additionally served copies on the below-listed parties by depositing same in the US Mail in Minneapolis, Minnesota in postage-prepaid envelopes addressed as noted.

1. NOTICE OF HEARING AND MOTION OF CZ-USA FOR AN ORDER ALLOWING ITS RECLAMATION CLAIM AS AN ADMINISTRATIVE EXPENSE CLAIM;
2. MEMORANDUM OF LAW; AND
3. ORDER GRANTING MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM.

Gander Mountain Company And Overton's Inc. c/o Lighthouse Management Group, Inc. Attention: Timothy G. Becker 900 Long Lake Road, Suite 180 New Brighton, MN 55112	Fredrikson & Byron, P.A. Attention: Clinton E. Cutler 200 South Sixth Street, Suite 4000 Minneapolis, MN 55402-1425
Lowenstein Sandler LLP Attention: Jeffrey Cohen and Keara Waldron 1251 Avenue of the Americas New York, New York 10020	Barnes & Thornburg LLP Attention: Connie A. Lahn 225 South Sixth Street, Suite 2800 Minneapolis, MN 55402-4662
META Advisors LLC Attn: James S. Carr, Dana P. Kane and James D. Hunt 101 Park Avenue, 30th Floor New York, New York 10178	

Dated: April 16, 2018

/e/ George E. Warner, Jr.