

**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

**RESPONSE OF CREDITOR MAGPUL INDUSTRIES CORP.
IN SUPPORT OF THE LIQUIDATING TRUSTEE'S MOTION SEEKING
AN ORDER AUTHORIZING THE LIQUIDATING TRUSTEE TO MAKE IMMEDIATE
PAYMENTS FROM THE RECLAMATION CLAIMANTS RESERVE**

Magpul Industries Corp. ("Magpul"), by its undersigned attorneys, submits this Response in Support of the Liquidating Trustee's Motion Seeking an Order Authorizing the Liquidating Trustee to Make Immediate Payments from the Reclamation Claimants Reserve filed with the Court on or about April 11, 2018 [Docket No. 1696] ("Motion"). In support of the Objection, Magpul states as follows:

1. The Debtors sold substantially all of their assets on May 4, 2017 ("Sale"). The Sale included chapter 5 claims.
2. Based on apparently false representations regarding the risk of insolvency of the estate, the Plan was confirmed¹ prior to the payment and liquidation of substantial administrative claims, including but not limited to at least \$12,000,000 in reclamation claims of creditors who extended credit under false pretenses while the Debtors planned a bankruptcy.

¹ And all professional fees were paid in full.
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3. Magpul has a disputed \$512,000 reclamation claim and an allowed \$73,000 503(b)(9) claim². Magpul objected to the Plan on the grounds that the Bankruptcy Code prohibits plan confirmation without payment of administrative claims on or before the effective date and, even if it appeared that the estate was solvent, the Code does not permit a plan to shift the risk of administrative insolvency onto only certain administrative claimants.

4. The Debtors, the Committee of Unsecured Creditors and Magpul agreed to resolve Magpul's Plan objection by negating the risk of administrative insolvency as to Magpul (and other objecting reclamation claimants) by establishing by Court order a separate, funded reserve ("Reclamation Claimants Reserve") specifically earmarked for the Magpul's and other objecting reclamation creditors ("Objecting Creditors").

5. The only purpose for such a provision was to protect the Objecting Creditors from the risk of administrative insolvency.

6. Just weeks after the Plan Effective Date, it appears that Magpul's concern was justified. The Trustee and its counsel continue to assert that the estate is not administratively solvent, even in the face of claims that greatly exceed assets available without even considering a \$1 billion dollar claim that the Trustee gives no discussion. There always has been a very real risk that this case is administratively insolvent and will remain so.

² The Plan required payment of allowed 503(b)(9) claims on the Effective Date or as soon as practicable thereafter. If not for the false representations regarding solvency and the Plan's requirement of immediate payment of Magpul's 503(b)(9) claim, Magpul would have insisted on the Reclamation Reserve including Magpul's 503(b)(9) claim.

7. The current Motion is unnecessary as the Plan and orders are clear, the Reclamation Creditors Reserve was created for this situation and exclusively for the benefit of the Objecting Creditors.

8. There is no provision in the Plan which requires funding of a segregated general administrative claim reserve. Although the Plan uses the words “Administrative Claims Reserve”, the Plan does not require funding a segregated account. Unlike the Reclamation Claimants Reserve, the Debtors intended, and the Plan provides, for one single account for all Plan obligations. The use of the word “reserve” is used as an accounting term, to provide that those claims be entitled to be paid first or an book entry will be “reserved” pending resolution. There is no inequity to any party in interest in requiring the Trustee to pay the Objecting Creditor’s claim from the segregated fund established expressly for such purpose under these very circumstances. To the extent that the case is insolvent, the unpaid administrative claimants accepted that risk when they did not participate in the Plan process.

WHEREFORE, for the above reasons, Magpul Industries Corp. requests that the Court grant the Liquidating Trustee’s Motion Seeking an Order Authorizing the Liquidating Trustee to Make Immediate Payments from the Reclamation Claimants Reserve.

Dated: May 4, 2018

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