

**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

**NOTICE OF HEARING AND THE TRUST'S
MOTION OBJECTING TO THE CLAIMS OF CISCO SYSTEMS CAPITAL**

TO: The entities specified in Local Rule 3007-1.

1. The Gander Mountain Liquidating Trust (the "Trust") by and through its undersigned counsel, moves the Court (the "Motion") for the relief requested below and entry of an order substantially in the form submitted herewith (the "Proposed Order") and gives notice of a hearing.

2. The Court will hold a hearing on this Motion on 10:30 a.m. on Wednesday, November 21, 2018, in Courtroom 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, MN, 55415.

3. Any response to this Motion must be filed and served no later than Friday, November 16, 2018, which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.** In the event a response is timely filed, and the Court determines there are facts in dispute which require an evidentiary hearing, the Trust requests that the Court treat the hearing scheduled above as a scheduling conference for purposes of setting the matter for evidentiary hearing.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. This Motion arises under 11 U.S.C. §§ 502, 503, and 507, and is filed under Fed. R. Bankr. P. 3007 and Local Rules 3007-1 and 9013-1 through 9013-3.

PRELIMINARY STATEMENT¹

5. As set forth below, Cisco has filed a Secured Claim in the aggregate amount of \$2,159,687.97, and an Administrative Claim in the aggregate amount of \$652,296.25. Cisco asserts that both claims arise from the Cisco Contracts, pursuant to which Cisco sold certain software and services, and leased² certain computer networking and telecommunications equipment and personal property to the Debtors. Cisco's Secured Claim is comprised of prepetition, postpetition, and future amounts allegedly due under the Cisco Contracts. Cisco's Administrative Claim is comprised of alleged postpetition amounts payable under the Cisco Contracts for use and possession of the Cisco Collateral.

6. Through this Motion, the Trust seeks to disallow and expunge both the Secured Claim and the Administrative Claim in their entirety based on Cisco's failure to provide sufficient documentation to establish *prima facie* validity of the claims. The Cisco proofs of claim attach certain contracts, invoices, and charts, but do not include any information establishing, *inter alia*, the value of the Cisco Collateral, the proceeds realized from the sale of certain Cisco Collateral, or that the Cisco Contracts were actual necessary costs or expenses of preserving the Debtors' estates. Because Cisco has failed to provide this necessary evidence, notwithstanding repeated

¹ Capitalized terms used in this Preliminary Statement but not defined herein shall have the meaning ascribed to such terms below.

² *Infra*, footnote 3.

requests by the Trust over a period of several months, the Trust seeks an order from this Court disallowing and expunging the Cisco Claims in their entirety.

STATEMENT OF FACTS

A. The Cisco Contracts.³

7. On March 16, 2007, Cisco Systems Capital Corporation (“Cisco”) (as lessor) and Gander Mountain Company (“Gander”) (as lessee) entered into the Master Installment Payment Agreement No. 6063 and its related Schedule No. MP005-0 dated April 26, 2016 and Schedule No. MP005-1 dated June 24, 2016 (collectively, the “Software Agreement”) pursuant to which the Debtors purchased certain software and services from Cisco.

8. On August 4, 2011, Cisco and Gander entered into the Master Agreements to Lease Equipment No. 9231 and the related Schedules 010-000, 011-000, 012-000, 013-000, 014-000, 015-000, 016-000, and 017-000 (collectively the “Equipment Agreement” and, together with Software Agreement, the “Cisco Contracts”) pursuant to which Cisco leased⁴ certain computer networking and telecommunications equipment and personal property to the Debtors.

9. On August 2, 2011, Cisco recorded Financing Statement No. 201125112472 (the “UCC-1”) with the Secretary of State of Minnesota. On July 22, 2016, Cisco filed a continuation statement with respect to the UCC-1 (the “Continuation Statement,” and together with the UCC-1, the “UCC Statement”).⁵ See Exhibit B to the Cisco Claim. Under the UCC Statement, Cisco

³ References to certain titles, terminology and designations used in the Cisco Contracts (including designations such as “lessee” and “lessor”) used here only for the sake of clarity for the sole purpose that they are consistent with the nomenclature used in the Cisco Contracts. Such references shall not be interpreted as an admission or waiver of any kind by the Trust. The Trust expressly reserves all rights to object to and contest the nature and the interpretation of the Cisco Contracts, including whether the Cisco Contracts are “true” leases and the amounts, if any, and priority owed by the Debtors’ estates in connection with the Cisco Contracts.

⁴ *Supra*, footnote 3.

⁵ The Trust expressly reserves all rights to challenge the extent, amount and validity of any alleged security interest asserted by Cisco in the Debtors’ property.

asserts a security interest in certain equipment (the “Cisco Equipment”); (b) all insurance, warranty, rental, and other claims and rights to payment and chattel paper arising out of such equipment; and (c) all books, records, and proceeds relating to the foregoing (the “Cisco Collateral”).

B. The Chapter 11 Cases.

10. The petitions commencing these Chapter 11 cases were filed by the above-captioned debtors (the “Debtors”) on March 10, 2017 (“Petition Date”). On March 21, 2017, the Court filed a Notice of Chapter 11 Bankruptcy Cases which, *inter alia*, established July 17, 2017 as the deadline (the “General Bar Date”) by which general unsecured creditors and governmental units must file proofs of claim.

11. On May 4, 2017, the Court entered the *Order Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and other Interests* [Docket No. 691] (the “Sale Approval Order”), which, among other things, authorized the Debtors to sell certain assets, approved the Debtors’ Asset Purchase Agreement, and approved certain procedures for the rejection of unexpired leases of nonresidential real property and the abandonment of personal property.

12. On May 5, 2017, the Court entered an *Amended Order Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests* [Docket No. 700] (the “Agency Approval Order”). The Agency Approval Order authorized the Debtors’ entry into an agreement (the “Agency Agreement”), pursuant to which the Agent (defined below) was authorized to act as the Debtors’ exclusive agent to conduct sales of certain of the Debtors’ assets, including, without limitation, certain of the Debtors’ inventory and

other assets. The parties closed on the transaction contemplated by the Agency Agreement and proceeded with the sales (the “Sale”).

13. On January 26, 2018, the Court entered an order (the “Confirmation Order”) confirming the *Debtors’ and Official Committee of Unsecured Creditors’ Joint Plan of Liquidation dated October 31, 2017* (the “Plan”). The effective date of the Plan occurred on February 8, 2018 (the “Effective Date”).

14. Pursuant to the Plan and the Confirmation Order, the estates of the Debtors were substantively consolidated for the purposes of confirming and consummating the Plan, including, but not limited to, making distributions in accordance with the terms of the Plan. The Plan established the Trust for the purpose of, among other things, collecting and administering all of the Debtors’ assets. The Plan appointed the META Advisors LLC (the “Liquidating Trustee”) to administer the Trust and to act as the representative of the estate within the meaning of 11 U.S.C. § 1123(b)(3)(B). The Plan grants the Liquidating Trustee the authority to address and resolve issues involving objections, reconciliation, and allowance of Claims⁶ and Equity Interests in accordance with the Plan.

C. The Cisco Claims and the Stipulation.

15. On April 17, 2017, Cisco filed a proof of claim, which has been identified by the claims agent as Claim No. 341, asserting a secured claim in the aggregate amount of \$2,159,687.97 (the “Secured Claim”). The Secured Claim provides that as of the date it was filed, the Debtors allegedly owed:

- (a) \$553,491.26 pursuant to the Cisco Contracts (“Current Rent Obligations”), comprised of (i) \$83,950.17 in prepetition payments that came due between January

⁶ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

and March 2017; and (ii) \$469,541.09 in postpetition payments that came due between March and April of 2017; and

(b) an additional \$1,606,196.71 in future amounts that would become due under the Cisco Contracts between April 17, 2017 and the expiration of the Cisco Contracts (“Projected Rent Obligations”).⁷

16. Further, Cisco asserts that a \$2,075,737.80⁸ portion of the Secured Claim (the portion representing the postpetition Current Rent Obligations and the Projected Rent Obligations) also constitutes an administrative expense under 11 U.S.C. § 503(b).

17. In May 2017 through July 2017, the Debtors filed *Notices of Hearing and Rejection of Unexpired Lease and Abandonment of Any Remaining Personal Property in the Leased Premises* (collectively, the “Lease Rejection Notices”). Pursuant to the Lease Rejection Notices, the Debtors gave notice, among other things, of their intent to abandon personal property remaining in the identified leased premises after a specified date, including certain of the Cisco Equipment.

18. On August 10, 2017, Cisco filed a limited objection to the Lease Rejection Notices [Docket No. 1106] (the “Cisco Lease Rejection Objection”). In the Cisco Lease Rejection Objection, Cisco argued, among other things, that the Debtors were not permitted to abandon the Cisco Equipment, but rather that the Debtors were responsible for the care, custody and control of the Cisco Equipment unless and until an order granting stay relief was entered.

⁷ The eleven Schedules to the Equipment Agreement and the Software Agreement each specify a separate expiration date. While the expiration dates vary, the latest extends through December of 2019.

⁸ Although Cisco’s subsequently filed Administrative Claim does not indicate that it amends the previously filed Secured Claim, it does appear to revise the asserted administrative expense amount based on the temporal restrictions (prohibiting the filing of any administrative claim after the August 24, 2017, Surrender Date) noted in the Stipulation, which was entered after the Secured Claim was filed.

19. On August 24, 2017, the Debtors, Cisco, and a contractual joint venture comprised of Tiger Capital Group, LLC, Great American Group WF, LLC, Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (the “Agent”) filed a stipulation (the “Stipulation”) terminating the automatic stay to allow Cisco to take possession of the Cisco Equipment as of that date (the “Surrender Date”).

20. Specifically, the Stipulation provides that Cisco:

- (a) take possession of the Cisco Equipment “in place”;
- (b) permit the Debtors and the Agent to use the Cisco Equipment in connection with the Sale through the end of the Sale at no further cost or expense of any kind to (i) the Debtors from and after the Surrender Date, or (ii) the Agent; and
- (c) engage the Agent to sell the Cisco Equipment for a commission equal to 17.5% of the gross proceeds (net of applicable sales taxes) from the sale of the Cisco Equipment; provided that the Agent shall not sell the Cisco Equipment situated at certain retail locations without Cisco’s written consent.

21. The Court entered an order approving the Stipulation on the same day [Docket No. 1167] (the “Stipulation Order”). The Stipulation authorized the Agent to abandon any and all unsold Cisco Equipment in place without any cost or liability to the Agent. The Stipulation also provided that to the extent any of the Cisco Equipment remained at any of the Debtors’ corporate offices or locations on the effective date of rejection of the underlying lease, such Cisco Equipment would be deemed abandoned at the time of rejection of the lease. *See* Stipulation ¶ 2.

22. On October 16, 2017, the Debtors filed the *Notice of Hearing and Notice of Rejection of Certain Contracts and Non-Real Property Leases* [Docket No. 1327] (the “Cisco Rejection Notice”), giving notice of their intent to reject the Cisco Contracts effective as of October

17, 2017 (the “Cisco Rejection Date”). On November 8, 2017, the Court entered an order approving the Cisco Rejection Notice [Docket No. 1374] (the “Cisco Rejection Order”).

23. On March 8, 2018, Cisco filed a *Request for Payment of Administrative Expense Claim*, which has been identified by the claims agent as Claim No. 21609, asserting an administrative claim in the aggregate amount of \$652,296.25 (the “Administrative Claim,” and together with the Secured Claim, the “Cisco Claims”) for postpetition amounts payable under the Cisco Contracts and the related Certificates of Acceptance. Cisco contends that the Administrative Claim accrued between the Petition Date through the “respective abandonment dates” and/or the Cisco Rejection Date, and thus, all amounts due and owing, but unpaid, for use and possession of the Cisco Collateral during this period constitute administrative expenses under 11 U.S.C. §503(b). The Administrative Claim is comprised of (a) \$387,377.47 in unpaid rents incurred between the Petition Date and May 9, 2017 under 11 U.S.C. § 365(d)(5); (b) \$259,150.51 in unpaid rent obligations incurred between May 10, 2017 through the abandonment date under 11 U.S.C. § 503(b)(1)(A); and (c) \$5,768.27 in personal property tax reimbursements under 11 U.S.C. § 503(b)(1)(B).

24. Cisco also argues that after entry of the Stipulation Order, the Debtors failed to surrender certain Cisco Equipment subject to the Cisco Contracts that the Debtors previously had certified (pursuant to the applicable Certificate of Acceptance) was situated at Debtor’s corporate headquarters located in Minneapolis, Minnesota (the “Headquarters Location”). Accordingly, in addition to the Cisco Administrative Claim asserted with respect to Debtors’ alleged failure to pay all amounts due and owing pursuant to the Cisco Contracts (including, without limitation, reimbursement of payments made with respect to personal property taxes), Cisco asserts an administrative expense for the fair market value of the Cisco Equipment that the Debtors allegedly

failed to surrender and/or return to Cisco. Cisco also asserts that in the event the Court determines that the Cisco Contract is not a true lease,⁹ the Cisco Administrative Claim is a secured claim pursuant to the terms of the Cisco Contracts and the recorded UCC Statement.

25. In support of the Cisco Claims,¹⁰ Cisco submitted explanatory “statements” of claim, a copy of the Equipment Agreement and certain schedules thereto, various Certificates of Acceptance relating to the Cisco Collateral that were executed by representatives of Gander, the UCC Statement, a demonstrative chart summarizing the invoices under the Cisco Contracts, a summary of unpaid rents, a summary of personal property tax invoices, and copies of the personal property tax invoices themselves.

26. In an effort to resolve the Cisco Claims without the need to resort to motion practice, counsel to the Trust requested further supporting documentation from Cisco, including an accounting of the net Sale proceeds and information on the fair market value of the Cisco Collateral, in an attempt to verify the amount, validity, and priority of the Cisco Claims. Counsel to the Trust requested such information on four occasions since May 24, 2018.¹¹ As of the filing of this Motion, Cisco has not provided the requested supporting documents necessary for the Trust to determine the extent, amount, priority, and validity of the Cisco Claims. Additionally, the Cisco Claims do not include any documentation or support in connection with Schedule No. 017-000, or any basis, support, or explanation whatsoever for its assertion that the Cisco Claims are entitled to administrative priority status.

⁹ For the avoidance of doubt, the Trust reserves all rights to object to the Cisco Claims, including but not limited to raise objections relating to whether or not the Cisco Contracts are actually “true” leases.

¹⁰ The Administrative Claim incorporates by reference all supporting documentation submitted with the Secured Claim.

¹¹ After the undersigned counsel to the Trust initially contacted counsel to Cisco regarding the information discussed in this paragraph on May 24, 2018, counsel to the Trust followed up via electronic correspondence on July 2, 2018, July 11, 2018, and July 26, 2018.

27. The Trust objects to the Cisco Claims because: (i) Cisco did not file sufficient documents to support and substantiate the Cisco Claims; and (ii) Cisco has failed to provide any further supporting documents to demonstrate the amount, validity, and priority of the Cisco Claims despite numerous requests by the Trust.

OBJECTION

I. The Cisco Claims Should be Disallowed and Expunged in Their Entirety.

28. As set forth in more detail in the memorandum of law submitted herewith, when asserting a proof of claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. If a proof of claim lacks sufficient documentary support to establish its validity, the Court should disallow the claim.

A. Cisco Failed to Provide Sufficient Documentation to Establish the Value of the Cisco Equipment.

29. Cisco asserts (i) a Secured Claim based on amounts owing under the Cisco Contracts, which are secured by the Cisco Collateral under the UCC Statements, and (ii) an Administrative Claim for the fair market value of the Cisco Equipment that the Debtors allegedly failed to surrender and/or return to Cisco. It is well settled that a creditor's secured claim is limited to the value of its collateral.

30. The Trust cannot verify the Secured Claim without: (i) an accounting with respect to the actual proceeds of the Sale of the Cisco Equipment; (ii) information on what, if any, payments Cisco received on account of the sale of the Cisco Equipment; and (iii) the value of any Cisco Equipment that was abandoned. Moreover, the Stipulation, which was approved by the Stipulation Order, expressly provides that to the extent any of the Cisco Equipment remained at any of the Debtors' corporate offices or locations on the effective date of rejection of the underlying lease, such Cisco Equipment was deemed abandoned at the time of rejection of the lease. *See* Stipulation ¶ 2. Because all of the Cisco Collateral was either sold or abandoned

pursuant to the terms of the Stipulation, Cisco's Secured Claim, if any, only exists to the extent of its credit for the proceeds of any sale of the Cisco Collateral by the Agent (net of taxes and commission).

31. As noted above, counsel to the Trust requested the relevant information four times, beginning on May 24, 2018, in an attempt to obtain the information necessary to evaluate the Cisco Claims. Since the Trust has not received the necessary requested information, Cisco has not established the *prima facie* validity of the Cisco Claims. Accordingly, the Trust submits that: (i) the Secured Claim should be disallowed and expunged in its entirety; and (ii) to the extent the Administrative Claim seeks alternative classification as a secured claim, it should be disallowed and expunged.

B. Cisco Failed to Provide Sufficient Documentation to State a Claim for Administrative Priority.

32. Cisco contends it is also entitled to an administrative claim in the amount of: (i) \$387,377.47 in unpaid rents incurred between the Petition Date and May 9, 2017; (ii) \$259,150.51 for unpaid rent obligations incurred between May 10, 2017 through the abandonment date under 11 U.S.C. § 503(b)(1)(A); and (iii) \$5,768.27 in personal property tax reimbursements under 11 U.S.C. § 503(b)(1)(B). Cisco further asserts that a portion of the Secured Claim (representing the postpetition Current Rent Obligations and the Projected Rent Obligations) also constitutes an administrative expense under 11 U.S.C. § 503(b).

33. Notably, to state a claim for administrative priority pursuant to 11 U.S.C. § 507(a)(2), a claimant must demonstrate that its claim was an actual and necessary cost or expense of preserving the bankruptcy estate. The Cisco Claims attach contracts, invoices, and charts, but do not include any evidence that the Cisco Contracts were actual, necessary costs or expenses of preserving the Debtors' estate. Because Cisco has failed to provide this necessary evidence, the

Administrative Claim must be disallowed and expunged in its entirety. Additionally, to the extent the Secured Claim seeks alternative classification as an administrative claim, it should be disallowed and expunged for these same reasons.

RESERVATION OF RIGHTS

34. The rights of the Trust to: (i) file subsequent objections to the Cisco Claims on any ground (whether substantive or non-substantive); (ii) amend, modify or supplement the Motion, including, without limitation, filing objections to further amended or newly-filed claims; (iii) seek to expunge or reduce any claim to the extent all or a portion of such claim has been paid; and (iv) settle any claim for less than the asserted amount, are expressly preserved.

35. To the extent that any portion of either of the Cisco Claims are also the subject of a separate claim objection on other grounds, whether by separate motion or through an adversary proceeding, the Trust requests that any order on this Motion not affect, eliminate, or determine those separate objections.

36. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a memorandum, proposed order, and proof of service.

37. As set forth above, parties in interest are afforded the opportunity to file a response (each, a "Response") to the relief requested in the Motion, as required by Local Rule 9013-2(b).

38. Pursuant to Local Rule 9013-2(c), the Trust gives notice that if an evidentiary hearing is held, it may, if necessary, call Dana P. Kane, of Kelley Drye & Warren LLP, whose business address is 101 Park Avenue, New York, NY 10178, James Hunt or James S. Carr of META Advisors LLC, whose business address is 101 Park Avenue, 30th Floor, New York, New York 10178, and/or Matthew Diaz from FTI Consulting, Inc., whose business address is Three Times Square, 9th Floor, New York, NY 10036, to testify as to the Debtors' books and records.

The Trust reserves the right to supplement its witness list to add additional witnesses or to expand the scope of expected testimony of identified witnesses prior to any evidentiary hearing.

WHEREFORE, the Trust respectfully requests that the Court enter an order disallowing and expunging the Cisco Claims and granting such other and further relief as this Court deems just and equitable.

Dated: October 19, 2018

Respectfully Submitted,

BARNES & THORNBURG LLP

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*Counsel for the Gander Mountain
Liquidating Trust*

VERIFICATION

I, James Hunt, on behalf of META Advisors LLC, not individually, but solely in its capacity as liquidating trustee for the Gander Mountain Liquidating Trust, have reviewed the Motion and declare, based upon (i) my personal knowledge, (ii) my review (or the review of persons under my supervision) of the books and records provided to me by the Debtors' former employees and/or the Trust's consultants, the Schedules and Statements filed in these Cases, the relevant proofs of claim, and the claims register, as well as relevant documents and other information prepared or collected by the Debtors' employees or professionals and/or the Trust's consultants and professionals, and/or (iii) my opinion based on my experience with the Debtors' operations and financial condition, that the facts set forth in the preceding Motion are true and correct to the best of my knowledge, information and belief.

Dated: October 18, 2018

By: 

**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

**MEMORANDUM OF LAW IN SUPPORT OF THE TRUST'S
MOTION OBJECTING TO THE CLAIMS OF CISCO SYSTEMS CAPITAL**

The Trust objects to Claim No. 341 and Claim No. 21609 (the "Cisco Claims") of Cisco Systems Capital Corporation ("Cisco") and requests that this Court enter an order disallowing and expunging the Cisco Claims in their entirety.

BACKGROUND

The facts in support of the relief requested are set forth in the verified Motion. All capitalized terms have the meaning ascribed to them in the Motion. As indicated in the Motion, the Trust objects to the Cisco Claims because: (i) Cisco did not file sufficient documents to support and substantiate the Cisco Claims; and (ii) Cisco has failed to provide any further supporting documents to demonstrate the amount, validity, and priority of the Cisco Claims despite numerous requests by the Trust.

ARGUMENT

When asserting a proof of claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). To receive the benefit of prima facie validity, however, the proof of claim must "set forth facts necessary to support the claim." *In re Stoecker*,

143 B.R. 879, 883 (N.D. Ill. 1992), *vacated on other grounds*, 5 F.3d 1022 (7th Cir. 1993) (citing 8 Collier on Bankruptcy ¶ 3001–22 (1992)). If a claimant fails to allege sufficient facts to support its claim, the proof of claim will not constitute prima facie evidence of the claim’s validity and amount under Bankruptcy Rule 3001I. *In re O’Brien*, 440 B.R. 654, 662-63 (Bankr. E.D. Pa. 2010), *abrogated on other grounds by*, 490 B.R. 186, 195 (Bankr. E.D. Pa. 2013).

As a result, a party wishing to dispute such a claim must produce evidence sufficient to negate the claim’s *prima facie* validity. *Allegheny Int’l, Inc.*, 954 F.2d at 173. The objecting party must produce evidence that would refute at least one of the allegations essential to the claim’s legal sufficiency. *Id.* Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* The burden of persuasion is always on the claimant. *Id.* If a proof of claim lacks sufficient documentary support to establish its validity, the Court may disallow the claim. *In re Minbatiwalla*, 424 B.R. 104, 119 (Bankr. S.D.N.Y. 2010); *see also In re O’Brien*, 440 B.R. at 666.

A. Cisco Failed to Provide Sufficient Documentation to Establish the Value of the Cisco Equipment.

It is well settled that a creditor’s secured claim is limited to the value of its collateral. *See* 11 U.S.C. §506(a)(1) (undersecured claims are bifurcated into a secured claim limited to the current value of the property and a general unsecured claim for the deficiency). Thus, the Trust cannot verify the Secured Claim without: (i) an accounting with respect to the actual proceeds of the Sale of the Cisco Equipment; (ii) information on what, if any payments Cisco received on account of the sale of the Cisco Equipment; and (iii) the value of any Cisco Equipment that was abandoned.

“[A] creditor who files a proof of claim that lacks sufficient support under Rule 3001I and (f) does so at its own risk” and that “proof of claim will lack prima facie validity, so any objection

that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor.” *In re Campbell*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005). Accordingly, because Cisco has failed to provide such information, the Trust submits that (i) the Secured Claim should be disallowed and expunged in its entirety, and (ii) to the extent the Administrative Claim seeks alternative classification as a secured claim, it should be disallowed and expunged.

B. Cisco Failed to Provide Sufficient Documentation to State a Claim for Administrative Priority.

Section 503(b)(1) of the Bankruptcy Code provides for the allowance of administrative expenses including the actual necessary costs and expenses of preserving the estate and certain taxes and related penalties and fines. 11 U.S.C. § 503(b). To state a claim for administrative priority pursuant to 11 U.S.C. § 507(a)(2), a claimant must demonstrate that its claim was an actual and necessary cost or expense of preserving the bankruptcy estate. This test generally requires proof of a benefit to the bankruptcy estate. *In re Burival*, 406 B.R. 548, 555 (B.A.P. 8th Cir. 2009), *aff'd*, 613 F.3d 810 (8th Cir. 2010). The burden of proof under § 503(b)(1) is on the claimant seeking an administrative expense claim. *Williams v. IMC Mortg. Co. (In re Williams)*, 246 B.R. 591, 594 (B.A.P. 8th Cir. 1999).

Because Cisco has failed to provide evidence showing the Cisco Claims cover actual, necessary costs or expenses of preserving the Debtors’ estate, the Administrative Claim must be disallowed. *See In re Sylva Corp., Inc.*, 519 B.R. 776, 783 (B.A.P. 8th Cir. 2014) (a request for an administrative expense claim for lease payments under § 503(b)(1)(A) must be supported by specific factual and legal findings with respect to the use of the equipment and the benefit to the estate). Accordingly, since the Administrative Claim is not supported by sufficient documentary evidence, it must be expunged and disallowed in its entirety. Additionally, to the extent the

Secured Claim seeks alternative classification as an administrative claim, it should be disallowed and expunged for these same reasons.

CONCLUSION

Based on the foregoing, the Trust respectfully requests that the Court disallow and expunge the Cisco Claims to the extent set forth in the Motion, and order such other and further relief as is just and equitable

Dated: October 19, 2018

Respectfully Submitted,

BARNES & THORNBURG LLP

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**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

CERTIFICATE OF SERVICE

I, Christopher Knapp, declare under penalty of perjury that on October 19, 2018, I served the following documents:

- 1. NOTICE OF HEARING AND THE TRUST'S MOTION OBJECTING TO THE CLAIMS OF CISCO SYSTEMS CAPITAL;**
- 2. VERIFICATION OF JAMES HUNT, ON BEHALF OF META ADVISORS LLC;**
- 3. MEMORANDUM OF LAW IN SUPPORT OF THE TRUST'S MOTION OBJECTING TO THE CLAIMS OF CISCO SYSTEMS CAPITAL**
- 4. CERTIFICATE OF SERVICE; AND**
- 5. PROPOSED ORDER GRANTING THE TRUST'S MOTION OBJECTING TO THE CLAIMS OF CISCO SYSTEMS CAPITAL**

by sending true and correct copies via ECF to the parties receiving ECF notice in this case, including those parties specified under Local Rule 3007-1, and by first class mail postage prepaid, or by facsimile, or emailed, the following documents, to the parties on the attached service list.

Dated: October 19, 2018

BARNES & THORNBURG LLP

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Counsel for the Gander Mountain Liquidating Trust

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<p>OFFICE OF THE U.S. TRUSTEE Suite 1015 300 South Fourth Street Minneapolis, MN 55402</p>		

**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

**ORDER GRANTING THE TRUST'S
MOTION OBJECTING TO THE CLAIMS OF CISCO SYSTEMS CAPITAL**

This matter is before the court on the Trust's Motion (the "Motion") Objecting to Claim No. 341 and Claim No. 21609 (the "Cisco Claims") of Cisco Systems Capital Corporation ("Cisco"). Based on the Motion and the documents of record herein,

IT IS ORDERED:

1. The Motion is granted.
2. The Cisco Claims are hereby disallowed and expunged in their entirety.
3. The rights of the Trust to: (i) file subsequent objections to the Cisco Claims on any ground (substantive or non-substantive); (ii) amend, modify or supplement the Motion, including, without limitation, filing objections to further amended or newly-filed claims; (iii) seek to expunge or reduce any claim to the extent all or a portion of such claim has been paid; and (iv) settle any claim for less than the asserted amount, are expressly preserved.
4. To the extent that the Cisco Claims are also the subject of a separate claim objection, or become subjection to a separate claim objection, on other grounds, whether by separate motion or through an adversary proceeding, this Order does not affect, eliminate, or determine those separate objections.

5. The Trust and the Liquidating Trustee are authorized to take any and all actions that are necessary and appropriate to give effect to this Order.

6. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: _____, 2018.

Judge Michael E. Ridgway
United States Bankruptcy Judge