

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: Case No. 17-30673 (Jointly Administered)

Gander Mountain Company,  
Overton's, Inc.

Chapter 11

Debtor.

---

**MEMORANDUM OF LAW OF DARRELL (JAY) TIBBETS, BRIAN KOHLBECK,  
JOSEPH FUSARO, MICHAEL KALCK, RONALD STOUPA, ROBERT WALKER, AND  
ERIC JACOBSEN IN RESPONSE TO THE TRUST'S OMNIBUS OBJECTION TO  
CLAIMS FILED BY CERTAIN KEY EXECUTIVES**

---

TO: The entities specified in local rule 3007 – 1.

FACTUAL BACKGROUND

1. Following the filing of the Chapter 11 bankruptcy, the Debtor and the Official Committee of Unsecured Creditors (“Creditors Committee”) deemed it to be in the best interests of the reorganizing Debtor to retain the services of Darrell (Jay) Tibbets, Brian Kohlbeck, Joseph Fusaro, Michael Kalck, Ronald Stoupa, Robert Walker, and Eric Jacobsen (collectively referred to as “Key Employees”).

2. For purposes of enhancing the value of the bankruptcy estate, the Debtor and the Creditors Committee negotiated and subsequently entered into either a Key Employee Incentive Plan (“KEIP”) or a Key Employee Retention Plan (“KERP”) with each of the Key Employees. Each agreement is attached collectively as **Exhibit “A”** to the supporting affidavit of Darrel “Jay” Tibbets (“Tibbets Affidavit”).

3. Both types of agreements were submitted to the Court on motion of the Debtors (See Docket No. 28) and subsequently approved by this Court per Court Order dated April 14,

2018 (See Docket No. 436), which further held that the compensation earned by the Key Employees should be treated as administrative claims under 11 U.S.C. Sec. 503(a) and 507(a)(2).

4. The KEIP and KERP agreements were negotiated and signed on a post-petition basis.

5. As part of the incentive and retention bonus pay for each of the Key Employees, there were four specific levels of performance criteria (**Threshold, Target, Stretch, Maximum**) that would determine the amount of the post-petition bonus and incentive payments to be made to each of the Key Employees.

6. The first level established by the KEIP and KERP agreements that would enable the Key Employees to receive bonus compensation set forth the following:

**Threshold.** You will earn an amount equal to 50% of your current base salary upon the Company closing on (i) one or more asset sales under Section 363 of the Code or (ii) one or more consulting or agency agreement(s) for the conduct of going out of business or similar sales, or a combination of (i) and (ii), for substantially all of the Companies assets (the "Sale"). ("Threshold")

7. During the course of the bankruptcy proceedings, the above quoted **Threshold** was, in fact, met, and there is no dispute that the Key Employees did receive the bonus compensation set forth in this provision.

8. However, the KEIP and KERP agreements also contained 3 additional levels and metrics by which the Key Employees could receive additional bonus compensation in an amount equal to 25% of their current base salaries for each of the 3 additional levels and metrics achieved during the course of the bankruptcy proceedings.

9. The second level set forth in the KEIP and KERP agreements set forth:

**Target.** You will earn an amount an amount equal to 25% of your base salary if (i) the cash or value of all of the property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the company's plan of

reorganization and/or liquidation the plan is equal to or exceeds 5%; and at least 35 stores are sold or transferred by the Company to one or more parties (“5% Distribution and 35 Stores Target”), and it is contemplated at the time of such transaction that such stores will be operated as retail stores under one or more trade names selling sporting goods, with a prominent or seasonal emphasis on hunting, camping, fishing, shooting, marine, or outdoor recreational products (“a Going Concern Sale”). (“35 Store Target”)

10. The third level set forth in the KEIP and KERP agreements set forth:

**Stretch.** You will earn an additional amount equal to 25% of your base salary if (i) the cash value or other property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the plan is equal to or exceeds 10%; or (ii) at least 60 stores are sold by the Company as a Going Concern Sale “60 Store Target”).

11. Based on the foregoing levels and metrics, in the event that the “5% Distribution and “35 Store Target” was met, the Key Employees would receive a 25% bonus; additionally if the “60 Store Target” or 10% distribution to creditors was accomplished, the total amount payable to the Key Employees would be an additional 25% bonus, or in the aggregate, 50% of their base salaries.

12. The forth level set forth in the KEIP and KERP agreements to qualify for an additional 25% base salary bonus set forth the following:

**Maximum.**

(1) You will earn an additional amount equal to 25% of your base salary if (i) the cash or value of other property estimated to be available for distribution to general unsecured creditors as of the date of confirmation of the plan is equal to or exceeds 10%; and (ii) at least 70 stores are sold by the Company as a Going Concern Sale.

(2) In the event the cash or value of other property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the Plan is at least 5% of such allowed claims but less than 10% of such allowed claims, the applicable bonus amount for the Maximum opportunity shall be a prorated amount calculated as the product of your Maximum opportunity bonus amount multiplied by a fraction, the numerator of which is the percentage of cash

or value of other property estimated to be available for distribution to general unsecured creditors as of the date of confirmation of the Plan and the denominator of which is 10%.

8. Based on the foregoing incentive levels and metrics for additional bonus compensation, in the event the **Target** “5% Distribution and 35 Stores Target” was achieved, the Key Employees are entitled to the following compensation as set forth in their respective initial proof of claim forms filed with Bankruptcy Court: (a) Eric Jacobsen – \$125,000.00; (b) Ronald J. Stoupa - \$81,250.00; (c) Robert Walker – \$75,000.00; (d) Darrell (Jay) Tibbets - \$125,000.00; (e) Brian Kohlbeck - \$87,500.00; (f) Michael Kalck - \$56,250.00; and (g) Joseph Fusaro - \$75,000.00.

9. Based on the foregoing incentive levels and metrics, in the event the **Stretch** “60 Store Target” was achieved without the 5% Distribution to allowed general unsecured creditors was not met, the Key Employees would be entitled to the following additional compensation as set forth in their respective proof of claim forms filed with Bankruptcy Court: ((a) Eric Jacobsen – \$125,000.00; (b) Ronald J. Stoupa - \$81,250.00; (c) Robert Walker – \$75,000.00; (d) Darrell (Jay) Tibbets - \$125,000.00; (e) Brian Kohlbeck - \$87,500.00; (f) Michael Kalck - \$56,250.00; and (g) Joseph Fusaro - \$75,000.00.

10. Based on the foregoing incentive levels and metrics, in the event the **Maximum** “10% Distribution and 70 Stores Target” was achieved, the Key Employees are entitled to the following additional compensation as an administrative expense claim: ((a) Eric Jacobsen – \$125,000.00; (b) Ronald J. Stoupa - \$81,250.00; (c) Robert Walker – \$75,000.00; (d) Darrell (Jay) Tibbets - \$125,000.00; (e) Brian Kohlbeck - \$87,500.00; (f) Michael Kalck - \$56,250.00; and (g) Joseph Fusaro - \$75,000.00.

11. Each incentive level of opportunity beyond the **Threshold** amount, if earned, is independent and will be in addition to any bonus earned under another opportunity (i.e., if you earn your **Threshold** opportunity you may earn an additional 25% if you satisfy any one of the

**Target, Stretch, or Maximum** opportunities) consistent with the incentive payment provisions set forth in the Court approved KEIP and KERP

12. The KEIP and KERP agreements were subsequently amended per agreement dated May 25, 2017.

13. As this case has progressed, to enhance the Debtors' reorganization efforts, and to preserve the estate for the benefit of all creditors, including unsecured creditors, the Key Employees agreed to expend their best efforts to accomplish the metrics recited above to assure unsecured creditors that they would receive at least a 5% distribution as part of the plan of reorganization, and that at least 35 of the Gander Mountain stores would be "sold or transferred by the Company to one or more parties." Alternatively, the Key Employees expended their best efforts to assure that "at least 60 stores are sold by the Company as a Going Concern Sale."

14. The sale of the Debtors' assets to third parties was approved by the Court on May 4, 2017 [Docket Number 691]. The buyer was Camping World Holdings, Inc. ("CWH").

15. To date, CWH has transitioned nearly 70 of the Gander Mountain stores into fully operating retail outlets consistent with the provisions of the KEIP and KERP, and a few other stores have also been transitioned into "going concern" retail outlets as well.

16. Currently, CWH has reopened 64 Gander Mountain and Overton's retail stores under the CWH banner, with at least 6 more planned for reopening during 2018 and 2019.

17. The two incentive levels and metrics that will trigger the additional compensation claimed in each of the proof of claim forms filed on behalf of the 7 Key Employees is whether or not the Debtor will be distributing at least 5% to the class of unsecured creditors and having 35 stores transitioned into operating retail outlets run by "one or more parties," (See **Target** Section of the KEIP/KERP) or, in the alternative, whether "at least 60 stores are sold by the Company (Gander Mountain) as a Going Concern Sale" (See **Stretch** Section of the KEIP/KERP). The

movants submit to this court that both incentive levels and metrics (**Target and Stretch**) either have, or will be, met, thus triggering the additional compensation payable to them under the KEIP and KERP.

18. In the event the total of all stores transitioned by CWH to ongoing and operating retail centers meets or exceeds the **Maximum** provision set forth above, this entitles the Key Employees to receive additional bonus compensation in the aggregate sum of \$625,000.00.

19. Each of the Key Employees filed a proof of claim with the Bankruptcy Court on December 17 and 18, 2018 (See Claims Register-Claims Nos. 21491, 21492, 21493, 21494, 21495, 21496, and 21497).

20. The energy, time, and work expended by each of the Key Employees was instrumental in preserving the value of the estate, allowed for the sale of the assets of the Debtor, and otherwise allowed the Debtor to continue operating with the continuity necessary to enhance the value of the estate for the benefit of not only the bankruptcy estate, but all creditors as well, including unsecured creditors.

21. Also, the services rendered by the Key Employees was also to assist Gander Mountain's ability to make a reasonable distribution to its creditors in the bankruptcy case.

22. Pursuant to the claims filed on behalf of each of the Key Employees, each of the Key Employees request an administrative expense priority consistent with the prior order issued by this court when it approved the KEIPs an KERPs.

23. In support of the claims filed on behalf of each of the Key Employees on April 30, 2017 the Wall Street Journal reported on the successful sale of the Debtors' assets to CWH and that it was the CWH's intent to keep as many of the 160 Gander Mountain stores operating as it could. In that same article (attached to the Tibbets Affidavit as **Exhibit "B"**) Marcus Lemonis, the Chief Executive of CWH, was quoted as saying "As part of the auction I committed to taking 17

[stores], but my goal is to keep open as many stores as I possibly can that have a clear path to profitability . . .” The article went on to note that Mr. Lemonis stated that it is likely that at least half of the Gander Mountain 160 stores won’t survive.

24. As a result of the foregoing article shortly after the auction of the Debtor’s assets took place, CWH contemplated keeping upwards of 80 Gander Mountain stores operational.

25. In a Camping World press release issued on May 1, 2017, a copy of which is attached to the Tibbets Affidavit as **Exhibit “C,”** Mr. Lemonis was quoted as saying “the Gander Mountain and Overton customer and their affinity to the outdoor lifestyle are the perfect complement to our Camping World business. The structure of our deal provides much flexibility and will not only allow us to refine the inventory selection and select only those stores which are profitable or we believe have a clear path to profitability, but will also allow us to immediately offer our comprehensive portfolio of services, protection plans, products and resources to the existing Gander Mountain and Overton customer base and in stores in which we elect to operate. While we are obligated to assume a minimum of 17 leases, our designation rights will allow us to operate stores and retained employees at a number to maximize profitability.”

26. On May 8, 2017 in an article appearing in Business Wire, a Berkshire Hathaway Company, the following was reported: “on May 5, 2017, CWH (Camping World) obtained the right to designate any real estate leases for assignment to Camping World or other 3<sup>rd</sup> parties and initially plans to operate stores that it believes have a clear path to profitability. Marcus Lemonis, Chairman and CEO of Camping World, stated ‘after reviewing the stores in more detail since our successful bid in the bankruptcy process, our goal is [to] operate 70 or more, locations subject to, among other things, our ability to negotiate lease terms with landlords on terms acceptable to us and approval of the Bankruptcy Court.’ As a result of the foregoing, by May 8, 2017 Camping World was already contemplating operating 70 of the Gander Mountain stores it had purchased

with bankruptcy court approval. A true and correct copy of the article is attached to the Tibbets Affidavit as **Exhibit “D.”**

27. Pursuant to the foregoing, as early as May 8, 2017 Camping World was already contemplating operating 70 Gander Mountain stores which would, in part, trigger the additional incentive levels and metrics for additional bonus compensation to be earned by each of the Key Employees pursuant to the KEIPs and KERPs.

28. In a Twitter issued by Mr. Lemonis on May 8, 2017 he provided an updated list of the Gander Mountain stores that would remain operational. That Twitter message is attached to the Tibbets Affidavit as **Exhibit E.”** That Twitter list identifies no less than 50 stores that Camping World intended to keep open after its successful purchase of the Gander Mountain and Overton assets.

29. In a Twitter issued by Mr. Lemonis on May 11, 2017 he provided an updated list of the Gander Mountain stores that would remain operational. That Twitter message is attached to the Tibbets Affidavit as **”Exhibit F.”** This Twitter list identifies 64 stores that Camping World intended to keep open after its successful purchase of the Gander Mountain and Overton assets. Once again, by opening 64 of the Gander Mountain stores and associated leases that were approved by the Bankruptcy Court, this supports the Key Employees’ contention that Camping World intended to open at least 60 of the Gander Mountain stores as that number of stores is referenced in both the KEIPs and the KERPs.

30. In a June 30, 2017 press release issued by Camping World Holdings, Inc. (“CWH”) it was reported: “Our original goal was to initially open 70 or more stores, and while our initial list is now less than 70, we are not willing to open stores which we do not believe have a clear path to profitability. Assuming details can be worked out with landlords and final acceptable leases agreed to, the following locations are expected to reopen under the new Gander Outdoors and Overton’s

and Camping World products and services.” The press release identified 57 store locations to remain open while additional leases were being negotiated by Camping World. This same press release also set forth: “in addition to the locations identified above, we are currently pursuing other locations for expansion and expect to announce additional locations and markets in the near term with all of our Gander Outdoors, Overton’s and Camping World offerings.” A copy of the press release is attached to the Tibbets Affidavit as **Exhibit “G.”**

31. On August 10, 2017 Second Quarter Earnings Call for CWH the Company reported 40 – 52 stores. . . 70 stores high end - rent factor has to work - have leverage with landlords.” Pursuant to the foregoing, on August 10, 2018 CWA was still contemplating opening 70 of the Gander Mountain stores.

32. On October 23, 2017 CWH filed its Form S-1 with the United States Securities and Exchange Commission (“SEC”) wherein CWH represented: “contingent on our final lease negotiations, our current plan is to open the initial 15 to 20 Gander Mountain stores, which will be rebranded as Gander Outdoors, by the end of the first quarter of 2018 and another 40 to 45 stores during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2018, with measured growth thereafter. We assumed the 15 Gander Mountain leases on October 6, 2017 through the exercise of Designation Rights and expect to enter into new leases directly with the lessors for the other locations.” Pursuant to Form S-1 CWH was still contemplating opening at least 55 – 65 Gander Mountain stores in addition to Overton’s stores. (See Tibbets Affidavit – **Exhibit “H”**).

33. At the November 9, 2017 CWH Earnings Conference call, CWH represented that 55 – 65 Gander Outdoor stores to be opened – 15 Gander leases assumed October 6 – contingent on lease negotiations 15 – 20 Gander Outdoors stores by and of the first quarter of 2018, and an additional 40 – 45 Gander Outdoor stores by the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2018.

34. On Mr. Lemonis' Facebook page on January 3, 2018 he read a list of stores to be opened by the end of May 18, 2018 and further set forth that 69 stores were "very solid" – to open, 2 more next week – 5 additional stores still being negotiated with landlords.

35. On January 4, 2018 CWH issued another press release announcing the initial list of Gander Outdoors retail store locations scheduled to be opened in 2018. This press release identified 69 Gander Mountain store locations to be opened under the CWH banner during the course of 2018. A true and correct copy of this press release is attached to the Tibbets Affidavit as **Exhibit "I."**

36. During the course of the February 27, 2018 CWH earnings conference call for the 4<sup>th</sup> Quarter of 2017, Mr. Lemonis commented that CWH had opened its first Gander Outdoor store in December and currently had 11 additional stores up and running. Early trends in the stores were very promising and CWH was seeing healthy early conversion rates of Gander customers and that it was CWH's plan to open nearly 72 Gander Outdoors stores by mid-June, 2018.

37. On March 13, 2018, CWH filed its 10-K with the SEC which represented that CWH planned to operate a total of 74 Gander Outdoors stores by May 2018, and additional Overton's stores. A true and correct copy of the 10 – K form is attached to the Tibbets Affidavit as **"Exhibit I."**

38. On the May 8, 2018 CWH Earnings Conference Call for the first quarter of 2018, Mr. Lemonis disclosed that CWH opened up 42 new Gander locations and that some additional openings were delayed or were the "various ones where we are building full dealerships and all facilities, so there is a retrofit involved."

39. In a June 28, 2018 CWH press release, the company represented that it had recently opened its first Gander RV Sales location in Kenosha, Wisconsin, and expected new Gander RV Sales locations to follow in no less than 34 previously operated Gander Mountain locations.

40. Pursuant to the foregoing, it is readily apparent that CWH contemplated opening at least 35 Gander Mountain stores as of the date of confirmation which would trigger additional compensation for the Key Employees under the **Target** metric set forth in the KEIPs and KERPs.

41. Additionally, pursuant to the foregoing, it is also readily evident that CWH contemplated reopening 60 of the Gander Mountain store locations under the CWH banner, and that the number of store openings might exceed 70 or more, which would trigger the additional bonus compensation set forth in the **Stretch** metric and the **Maximum** metric respectively, contained in each of the KEIPs and KERPs.

42. Presently, there is no way of knowing whether or not the unsecured creditors in this bankruptcy case will receive a distribution of 5% or more of their respective claims given that the claims objection time period has yet to run, and the Liquidating Trustee has recently filed a request to extend the deadline for filing additional claims objections. However, it is noted that the incentive criteria for both the distribution to unsecured creditors and store count is predicated on “the date of confirmation of the Company’s Plan of Reorganization and/or Liquidation (the “Plan”)” per the provisions of the respective KEIPs and KERPs

43. The facts that Darrel Tibbets has laid out his affidavit are equally, and additionally, applicable to the proofs of claims that Brian Kohlbeck, Joseph Fusaro, Michael Kalck, Ronald Stoupa, Robert Walker, and Eric Jacobsen have filed in this bankruptcy case as well as those to support the proofs of claims filed by the 6 Key Employees that have filed similar proofs of claims.

#### LEGAL ARGUMENT

**1. The Trust’s Objection is premature and cannot be ruled until all claims and claims objections have been allowed/disallowed and adjudicated.**

The Trust’s objection to the 7 claims filed on behalf of the 7 Key Employees is premature. As set forth in the KEIPs and the KERPs the additional administrative expense

priority claim filed on behalf of each of the 7 Key Employees is, in part, derivative of at least a 5% distribution being made to the allowed general unsecured creditors. At the present time, there is no way of knowing what amount of distribution may be made to the allowed general unsecured creditors given that the deadline for objecting to claims has not yet passed and the Trust has recently requested an extension for filing claim objections. There are also a number of pending objections recently filed by the Trust. Until each and every general unsecured claim is either allowed or adjudicated, it is impossible to know what the final distribution may be for the allowed general unsecured claims in this bankruptcy case. Therefore, the pending objection should be continued until such time as there is a final determination regarding the distribution to be made to the general unsecured nonpriority creditors. A distribution of 5%, or more, to the general unsecured creditors is a key component for determining whether the 7 Key Employees are entitled to additional bonus compensation pursuant to the KEIPs and KERPs previously approved by this Court. This includes additional compensation that may be due under the **Target** and **Maximum** provisions contained in each of the agreements.

Additionally, once there has been a final determination rendered regarding the distribution to be made to the general unsecured nonpriority creditors, and the amount of the distribution to be made to the general unsecured nonpriority creditors happens to be less than 5%, this outcome will be determinative of the claims that have been filed on behalf of the 7 Key Employees and whether or not they are entitled to any additional bonus compensation under the **Target** and **Maximum** metrics. As mentioned earlier, the **Stretch** metric is not dependant upon any distribution to unsecured creditors provided 60 stores are reopened. Therefore, the pending objection to each of the 7 Key Employee claims should be deferred and continued until such time as there has been a final determination regarding the distribution to be made to the general unsecured nonpriority creditors in this case.

**2. The Key Employees agree with the Trust's assertion that they have received \$1,250,000.00 of bonus compensation earned under the "Threshold" metric set forth in the KEIPs and the KERPs.**

The 7 Key Employees are not contending that they did not receive the bonus compensation earned under the "**Threshold**" metric set forth in each of the KEIPs and the KERPs. That is a non-issue in this proceeding. The **Threshold** metric was satisfied as a result of the time, energy, and effort expended by the Key Employees to bring about the sale of the Overton and Gander Mountain assets to CWH. The claims filed on behalf of the 7 Key Employees are all derivative of the **Target, Stretch, and Maximum** metrics that are contained in the KEIPs and the KERPs.

**3. The claims filed on behalf of the 7 Key Employees have complied with Bankruptcy Rule 3001 and the claims do contain the amount of postpetition administrative expenses being sought and further provide the written documentation and backup information necessary for determining such claims.**

The Trust asserts that "the Key Executives have failed to assert any grounds by which they would be entitled to receive any of the Unearned Bonuses under express terms of the KERP/KEIP Order. Because the Key Executives have not and cannot meet their burden of showing they are entitled to the Unburned Bonuses under the KERP/KEIP Order, the Executive Claims should be disallowed and expunged in their entirety." This assertion is not supported by the record before this court and the proof of claim forms filed on behalf of each of the 7 Key Employees.

In support of their claims, each of the Key Employees attached a copy of the KERP/KEIP Order which specifically outlined each of the metrics by which the Key Employees would be entitled to earn additional bonus compensation, as well as copies of each KEIP and KERP. Each of the metrics for additional bonus compensation have been specifically set forth in the

attachments to each proof of claim. There should be no confusion on the part of the Trust as to how the initial claims were tabulated and how the amended claims were tabulated.

The initial claims asserted additional bonus compensation earned by each of the Key Employees under the **Target** metric, i.e., bonus compensation of an additional 25% of each Key Employee's base salary. That is the exact number that appears for each of the initial claims filed on behalf of the 7 Key Employees. The claim amounts were based on information disclosed by CWH prior to and following confirmation of the Chapter 11 Plan, and as more fully set forth in the Tibbets Affidavit, that CWH intended to open more than 35 Gander Mountain/Overton stores, and that the Trust estimated that there would be a distribution to nonpriority unsecured creditors in an amount that might be 5% or greater. That being the case, each claimant filed an initial claim for the additional 25% bonus compensation that would be earned for satisfying the elements of the **Target** metric.

As the case progressed, it became readily apparent that based upon the CWH press releases, Mr. Lemonis tweets, and other information as set forth in the Tibbets Affidavit, that at the time of confirmation of the Debtor's Chapter 11 Plan CWH had already contemplated reopening upwards of 70 Gander Mountain stores. In the event 70 Gander Mountain stores were reopened, this would satisfy the number of store re-openings required to qualify for additional bonus compensation under the **Stretch** and **Maximum** metrics set forth in the KEIPs and the KERPs. Further, at the time that the amended claims were filed on behalf of the 7 Key Employees, the Chapter 11 Plan "estimated that recoveries available to general unsecured creditors would range from 2.2% - 6.4%." (See Trust's Objection p. 8 and *See* Docket No. 1427 at Exhibit B.)

Based on this estimated distribution to be made to the general unsecured nonpriority creditors plus the opening of 60-70 Gander Mountain stores, the 7 Key Employees would be

entitled to receive, at a minimum, additional bonus compensation under the **Stretch** metric equal to an additional 25% of their base salary as contained in the KEIPs and KERPs, and an additional 25% of their base salary pursuant to the **Maximum** metric. Unlike the argument propounded by the Trust, the **Stretch** metric is satisfied in the event there is a 10% distribution (while not likely but could occur based on the outcome of the claims objections) made to unsecured creditors or “at least 60 stores are sold by the Company as a Going Concern Value.” In other words, if 60 Gander Mountain stores were reopened under the CWH banner, the amount of the distribution to unsecured creditors is a non-factor for determining whether or not this metric has been met. The Key Employees assert that more than 60 Gander Mountain stores have been reopened by CWH, thus entitling them to the bonus compensation contained in the **Stretch** metric.

Under the **Maximum** metric, in the event that the general unsecured nonpriority creditors receive a 10% distribution (again, while not likely but could occur based upon the outcome of the claims objections filed by the Trust and a final determination regarding the total of the allowed unsecured nonpriority creditors), and “70 stores are sold by the Company as a Going Concern Sale” the 7 Key Employees would be entitled to receive an additional 25% of their base salary (on top of the 25% earned for satisfying the **Target** metric and another 25% for satisfying the **Stretch** metric) as bonus compensation. The **Maximum** metric may also be satisfied, subject to a prorated amount of additional compensation, in the event 70 Gander Mountain stores are reopened and there is only a 5% or more distribution made to the general unsecured creditors. The amended claims filed on behalf of the Key Employees include additional bonus compensation in the amount of 75% of their bases salaries arising from satisfying the **Target** metric (25%), the **Stretch** metric (25%), and the **Maximum** metric (25%).

Presently, there is no way to quantify what amount of distribution may be made to creditors until after all claims have been adjudicated or otherwise allowed or disallowed.

Therefore, it is too premature for the Court to rule on the Trust's objection until all claims have been resolved.

Alternatively, the 7 Key Employees acknowledge that in the event the nonpriority unsecured creditors receive less than a 5% distribution from the estate, they would no longer qualify for additional bonus compensation under either the **Target or Maximum** metrics. That would further support the Key Employees' argument that this motion is premature and cannot be decided by the court until all claims have been resolved or settled.

The court should further note that the disclosures issued by CWH in the form of press releases, filings with the SEC, and each of the earnings calls referenced by Mr. Tibbets in his affidavit are all highly regulated by the SEC and all constitute disclosures and representations that are subject to applicable state and federal laws and regulations requiring the truthfulness of such disclosures and further CWH represents that the disclosures and representations "do not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statement were made, not misleading with respect to the period covered by this report."

The Trust has not provided this Court with any information whatsoever to otherwise challenge the validity of the claims that have been filed on behalf of each of the 7 Key Employees. Further, the Trust failed to provide this Court with any foundation to support its conclusion that less than 35 or 70 stores were contemplated to be opened by CWH that had previously been operated as either Gander Mountain or Overton stores.

The sufficiency of a proof of claim is governed by Bankruptcy Rule 3001 which sets forth as follows:

(a) *Form and Content.* A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form. . .

(b) *Claim Based on a Writing*. Except for a claim governed by paragraph (3) of this subdivision, one of claim, or an interest in property of the debtor securing the claim, is based on of writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed a statement of the circumstances of the loss or destruction shall be filed with the claim.

Each of the claims filed on behalf of the Key Employees comply with the requirements of Bankruptcy Rule 3001. Each of the claims contained the Order approving the KEIPs and KERPs for each of the individual Key Employees and copies of each of the agreements approved by the Bankruptcy Court were also attached to each of the claims. The Order and each of the agreements constitute the writing which forms the basis for each of the claims now being asserted by the claimants in this bankruptcy case.

As the court well knows, there is a shifting burden with respect to claims timely filed. A good analysis of the shifting burden is set forth in the case of *In re Gulley*, 400 B.R. 529 (Bkrcty. N.D. Tex. 2009) which sets forth: “(a) a claimant who has complied with Bankruptcy Rule 3001 ... may rest on its proof of claim (it having an independent evidentiary effect such as a verified complaint) and refrain from presenting any additional evidence at the hearing on an objection; (b) the claimant will prevail unless the objecting party produces evidence of equal or greater probative force to that of the proof of claim to refute some aspect of the proof of claim; (c) if the objector does come forward with such probative evidence, then whichever party has the burden of proof respecting assertion of the claim outside of bankruptcy bears the burden in the contested matter from that point forward.” *Id.* at 541, *citing, In re Leverett*, 378 B.R. 793, 799 (Bkrcty. E.D. Tex. 2007).

In the Trust’s objection it concedes that the distribution to unsecured creditors may very well be in excess of 5%. Further, there is absolutely nothing to support the assertion in the objection that only 19 stores were “assumed or assigned” at the time of confirmation of the Chapter 11 Plan.

The terms “assumption” and “assignment” are nowhere to be found in the KEIPs or the KERPs. Therefore, if there is any deficiency associated with this Motion it is the Trust’s failure to produce “evidence of equal or greater probative force to that of the proof of claim to refute some aspect of the proof of claim.”

**4. The Trust misstates the plain language of the KEIPs and the KERPs.**

On Page 8 (Paragraph 33) the Trust asserts that “only 19 stores were assumed and assigned by the Debtors as of the date the Confirmation Order was entered, far short of the 60 stores required by the Stretch Bonus.” Unfortunately for the Trust, that is not the language that is set forth in the KEIPs and the KERPs. The 3 metrics contained in the KERPs and the KEIPs contains language that “at least (insert applicable number of stores) Stores are sold or transferred by the Company to one or more parties, and it is contemplated at the time of such transaction(s) that such stores will be operated as retail stores under one or more tradenames selling sporting goods, . . .” Nowhere in the KEIPs or KERPs is there any mention of stores being “assumed” or “assigned.”

As evidenced by the exhibits attached to the Tibbets Affidavit, it is readily apparent that CWH contemplated, at a minimum, reopening more than 35 Gander Mountain stores and that CWH contemplated reopening upwards of 70 Gander Mountain stores at the time of the confirmation of the Debtor’s Chapter 11 Plan.

There appears to be a disagreement regarding what each of the KERPs and KEIPs may actually require with respect to the number of Gander Mountain stores that were to be reopened under the CWH banner. Based on the attachments to the Tibbets Affidavit it is readily apparent that at a minimum, CWH contemplated reopening more than 35 stores which would trigger the **Target** metric for additional bonus compensation (provided the distribution being made to the unsecured creditors is at least 5%). The affidavit of Jay Tibbets also provides sufficient

information with which this court can conclude that CWH contemplated reopening 60 Gander Mountain stores, and as much as 70 Gander Mountain stores at the time of the Chapter 11 Plan was confirmed by the court. These numbers would qualify the Key Employees under either the **Stretch** or **Maximum** metrics, or perhaps both. These divergent interpretations of what the KEIPs and KERPs actually stand for may give rise to an ambiguous contract.

A contract is ambiguous when the terms are susceptible of more than one reasonable meaning. In the event there is a determination that the KERPs and KEIPs are ambiguous, any ambiguity and such contract should be construed against the drafter. *Shaw Hofstra & Associates v. Ladco Development Inc.*, 673 F.3d 819, 828 (8<sup>th</sup> Cir. 2012). In this particular case, the KEIPs and KERPs were drafted by the Debtor and the Creditors Committee. To the extent that the language contained in the metrics set forth in the KERPs and KEIPs is, indeed ambiguous, the agreements should be construed in favor of the non-drafting parties, i.e., the 7 Key Employees.

#### CONCLUSION

Pursuant to the foregoing response to the Trust's motion objecting to the claims filed on behalf of the 7 Key Employees, the motion should be denied based on the following: (a) the motion, at best, is premature until such time as there is a final determination regarding all of the allowed claims of the unsecured creditors; (b) each of the proof of claim forms filed on behalf of the 7 Key Employees comply with the requirements of Bankruptcy Rule 3001 and contain sufficient information to verify the claims filed on behalf of each individual; (c) the proof of claim forms filed on behalf of the 7 Key Employees are supported by the actions undertaken by the Debtor and CWH prior to the confirmation of the Chapter 11 Plan to reopen anywhere between 35 – 70 Gander Mountain stores under the CWH banner.

Respectfully submitted,

ANASTASI JELLUM, P.A.

Dated: November 21, 2018

/s/ T. Chris Stewart

T. Chris Stewart, #152316

Attorneys for Darrell (Jay) Tibbets, et al.

14985 60<sup>th</sup> Street North

Stillwater, MN 55082

Telephone: (651) 332-8302

Fax: (651) 332-8302

E-Mail: [chris.stewart@aj-law.com](mailto:chris.stewart@aj-law.com)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: Case No. 17-30673 (Jointly Administered)  
Gander Mountain Company, Case No. 17-30673  
Overton's, Inc. Case No. 17-30675 Chapter 11  
Debtor.

---

**AFFIDAVIT OF DARRELL (JAY) TIBBETS, ET AL, FOR ALLOWANCE OF CLAIMS OF DARRELL (JAY) TIBBETS, BRIAN KOHLBECK, JOSEPH FUSARO, MICHAEL KALCK, RONALD STOUPA, ROBERT WALKER, AND ERIC JACOBSEN AS ADMINISTRATIVE EXPENSES PURSUANT TO 11 U.S.C SEC. 507(a) and 503 (b)(1)(A)(i)**

---

STATE OF MINNESOTA )  
)  
)  
COUNTY OF HENNEPIN )

1. Following the filing of the Chapter 11 bankruptcy, the Debtor and the Official Committee of Unsecured Creditors (“Creditors Committee”) deemed it to be in the best interests of the reorganizing Debtor to retain the services of Darrell (Jay) Tibbets, Brian Kohlbeck, Joseph Fusaro, Michael Kalck, Ronald Stoupa, Robert Walker, and Eric Jacobsen (collectively referred to as “Key Employees).

2. For purposes of enhancing the value of the bankruptcy estate, the Debtor and the Creditors Committee negotiated and subsequently entered into either a Key Employee Incentive Plan (“KEIP”) or a Key Employee Retention Plan (“KERP”) with each of the Key Employees (Each agreement is attached hereto collectively as **Exhibit “A”**).

3. Both types of agreements were submitted to the Court on motion of the Debtors (See Docket No. 28) and subsequently approved by this Court per Court Order dated April 14,

2018 (See Docket No. 436), which further held that the compensation earned by the Key Employees should be treated as administrative claims under 11 U.S.C. Sec. 503(a) and 507(a)(2).

4. The KEIP and KERP agreements were negotiated and signed on a post-petition basis.

5. As part of the incentive and retention bonus pay for each of the Key Employees, there were four specific levels of performance criteria (**Threshold, Target, Stretch, Maximum**) that would determine the amount of the post-petition bonus and incentive payments to be made to each of the Key Employees.

6. The first level established by the KEIP and KERP agreements that would enable the Key Employees to receive bonus compensation set forth the following:

**Threshold.** You will earn an amount equal to 50% of your current base salary upon the Company closing on (i) one or more asset sales under Section 363 of the Code or (ii) one or more consulting or agency agreement(s) for the conduct of going out of business or similar sales, or a combination of (i) and (ii), for substantially all of the Companies assets (the "Sale"). ("Threshold")

7. During the course of the bankruptcy proceedings, the above quoted threshold was, in fact, met, and there is no dispute that the Key Employees did receive the bonus compensation set forth in this provision in the amount of \$1,250,000.00.

8. However, the KEIP and KERP agreements also contained 3 additional levels and metrics by which the Key Employees could receive additional bonus compensation in an amount equal to 25% of their current base salaries for each of the 3 additional levels and metrics achieved during the course of the bankruptcy proceedings.

9. The second level set forth in the KEIP and KERP agreements set forth:

**Target.** You will earn an amount an amount equal to 25% of your base salary if (i) the cash or value of all of the property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the company's plan of

reorganization and/or liquidation the plan is equal to or exceeds 5%; and at least 35 stores are sold or transferred by the Company to one or more parties (“5% Distribution and 35 Stores Target”), and it is contemplated at the time of such transaction that such stores will be operated as retail stores under one or more trade names selling sporting goods, with a prominent or seasonal emphasis on hunting, camping, fishing, shooting, marine, or outdoor recreational products (“a Going Concern Sale”). (“35 Store Target”)

10. The third level set forth in the KEIP and KERP agreements set forth:

**Stretch.** You will earn an additional amount equal to 25% of your base salary if (i) the cash value or other property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the plan is equal to or exceeds 10%; or (ii) at least 60 stores are sold by the Company as a Going Concern Sale “60 Store Target”).

11. Based on the foregoing levels and metrics, in the event that both the “5% Distribution and “35 Store Target” and the “60 Store Target” were accomplished, the total amount payable to the Key Employees would be an additional 50% of their base salaries.

12. The fourth level set forth in the KEIP and KERP agreements to qualify for an additional 25% base salary bonus set forth the following:

**Maximum.**

(1) You will earn an additional amount equal to 25% of your base salary if (i) the cash or value of other property estimated to be available for distribution to general unsecured creditors as of the date of confirmation of the plan is equal to or exceeds 10%; and (ii) at least 70 stores are sold by the Company as a Going Concern Sale.

(2) In the event the cash or value of other property estimated to be available for distribution on allowed claims of general unsecured creditors as of the date of confirmation of the Plan is at least 5% of such allowed claims but less than 10% of such allowed claims, the applicable bonus amount for the Maximum opportunity shall be a prorated amount calculated as the product of your Maximum opportunity bonus amount multiplied by a fraction, the numerator of which is the percentage of cash or value of other property estimated to be available for distribution to general unsecured creditors as of the date of confirmation of the Plan and the denominator of which is 10%.

8. Based on the foregoing incentive levels and metrics for additional bonus compensation, in the event the **Target** “5% Distribution and 35 Stores Target” was achieved, the Key Employees are entitled to the following compensation as set forth in their respective initial proof of claim forms filed with Bankruptcy Court: (a) Eric Jacobsen – \$125,000.00; (b) Ronald J. Stoupa - \$81,250.00; (c) Robert Walker – \$75,000.00; (d) Darrell (Jay) Tibbets - \$125,000.00; (e) Brian Kohlbeck - \$87,500.00; (f) Michael Kalck - \$56,250.00; and (g) Joseph Fusaro - \$75,000.00.

9. Based on the foregoing incentive levels and metrics, in the event the **Stretch** “60 Store Target” was achieved but the 5% Distribution to allowed general unsecured creditors was not met, the Key Employees would be entitled to the following additional compensation as set forth in their respective proof of claim forms filed with Bankruptcy Court: ((a) Eric Jacobsen – \$125,000.00; (b) Ronald J. Stoupa - \$81,250.00; (c) Robert Walker – \$75,000.00; (d) Darrell (Jay) Tibbets - \$125,000.00; (e) Brian Kohlbeck - \$87,500.00; (f) Michael Kalck - \$56,250.00; and (g) Joseph Fusaro - \$75,000.00.

10. Based on the foregoing incentive levels and metrics, in the event the **Maximum** “10% Distribution and 70 Stores Target” was achieved, the Key Employees are entitled to the following additional compensation as an administrative expense claim: ((a) Eric Jacobsen – \$125,000.00; (b) Ronald J. Stoupa - \$81,250.00; (c) Robert Walker – \$75,000.00; (d) Darrell (Jay) Tibbets - \$125,000.00; (e) Brian Kohlbeck - \$87,500.00; (f) Michael Kalck - \$56,250.00; and (g) Joseph Fusaro - \$75,000.00.

11. Each incentive level of opportunity beyond the **Threshold** amount, if earned, is independent and will be in addition to any bonus earned under another opportunity (i.e., if you earn your Threshold opportunity you may earn an additional 25% if you satisfy any one of the Target, Stretch, or Maximum opportunities up to a maximum of 75% of each Key Employees’

base salary) consistent with the incentive payment provisions set forth in the court approved KEIP and KERP

12. The KEIP and KERP agreements were subsequently amended per agreement dated May 25, 2017.

13. As this case has progressed, to enhance the Debtors' reorganization efforts, and to preserve the estate for the benefit of all creditors, including unsecured creditors, the Key Employees agreed to expend their best efforts to accomplish the metrics recited above to assure unsecured creditors that they would receive at least a 5% distribution as part of the plan of reorganization, and that at least 35 of the Gander Mountain stores would be "sold or transferred by the Company to one or more parties." Alternatively, the Key Employees expended their best efforts to assure that "at least 60 stores are sold by the Company as a Going Concern Sale."

14. The sale of the Debtors' assets to third parties was approved by the Court on May 4, 2017 [Docket Number 691].

15. To date, Camping World Holdings, Inc. ("CWH") has transitioned nearly 70 of the Gander Mountain stores into fully operating retail outlets consistent with the provisions of the KEIP and KERP, and a few other stores have also been transitioned into "going concern" retail outlets as well.

16. Currently, CWH has reopened 64 Gander Mountain and Overton's retail stores under the CWH banner, with at least 6 more planned for reopening during 2018 and 2019.

17. The two incentive levels and metrics that will trigger the additional compensation claimed in each of the proof of claim forms filed on behalf of the 7 Key Employees is whether or not the Debtor will be distributing at least 5% to the class of unsecured creditors and having 35 stores transitioned into operating retail outlets run by "one or more parties," (See **Target** Section of the KEIP/KERP) or, in the alternative, whether "at least 60 stores are sold by the Company

(Gander Mountain) as a Going Concern Sale” (See **Stretch** Section of the KEIP/KERP). The Key Employees submit to this court that both incentive levels and metrics (**Target and Stretch**) either have, or will be, met, thus triggering the additional compensation payable to them under the KEIP and KERP.

18. In the event the total of all stores transitioned by CWH to ongoing and operating retail centers meets or exceeds the **Maximum** provision set forth above, this entitles the Key Employees to receive additional bonus compensation in the aggregate sum of \$625,000.00.

19. Each of the Key Employees filed a proof of claim with the Bankruptcy Court on December 17 and 18, 2018 (See Claims Register-Claims Nos. 21491, 21492, 21493, 21494, 21495, 21496, and 21497).

20. The energy, time, and work expended by each of the Key Employees were instrumental in preserving the value of the estate, allowed for the sale of the assets of the Debtor, and otherwise allowed the Debtor to continue operating with the continuity necessary to enhance the value of the estate for the benefit of not only the bankruptcy estate, but all creditors as well, including unsecured creditors.

21. Also, the services rendered by the Key Employees was also to assist Gander Mountain’s ability to make a reasonable distribution to its creditors in the bankruptcy case.

22. Pursuant to the claims filed on behalf of each of the Key Employees, each of the Key Employees request an administrative expense priority consistent with the prior order issued by this court when it approved the KEIPs an KERPS.

23. In support of the claims and amended claims filed on behalf of each of the Key Employees on April 30, 2017 the Wall Street Journal reported on the successful sale of the Debtors’ assets to CWH and that it was the CWH’s intent to keep as many of the 160 Gander Mountain stores operating as it could. In that same article (attached hereto as **Exhibit “B”**) Marcus

Lemonis, the Chief Executive of CWH was quoted as saying “As part of the auction I committed to taking 17 [stores], but my goal is to keep open as many stores as I possibly can that have a clear path to profitability . . .” The article went on to note that Mr. Lemonis stated that it is likely that at least half of the Gander Mountain 160 stores won’t survive.

24. As a result of the foregoing article shortly after the auction of the Debtor’s assets took place, CWH contemplated keeping upwards of 80 Gander Mountain stores operational.

25. In a Camping World press release issued on May 1, 2017, a copy of which is attached hereto as **Exhibit “C,”** Mr. Lemonis was quoted as saying “the Gander Mountain and Overton customer and their affinity to the outdoor lifestyle are the perfect complement to our Camping World business. The structure of our deal provides much flexibility and will not only allow us to refine the inventory selection and select only those stores which are profitable or we believe have a clear path to profitability, but will also allow us to immediately offer our comprehensive portfolio of services, protection plans, products and resources to the existing Gander Mountain and Overton customer base and in stores in which we elect to operate. While we are obligated to assume a minimum of 17 leases, our designation rights will allow us to operate stores and retained employees at a number to maximize profitability.”

26. On May 8, 2017 in an article appearing in Business Wire, a Berkshire Hathaway Company, the following was reported: “on May 5, 2017, CWH (Camping World) obtained the right to designate any real estate leases for assignment to Camping World or other 3<sup>rd</sup> parties and initially plans to operate stores that it believes have a clear path to profitability. Marcus Lemonis, Chairman and CEO of Camping World, stated ‘after reviewing the stores in more detail since our successful bid in the bankruptcy process, our goal is [to] operate 70 or more, locations subject to, among other things, our ability to negotiate lease terms with landlords on terms acceptable to us and approval of the Bankruptcy Court.’ As a result of the foregoing, by May 8, 2017 Camping

World was already contemplating operating 70 of the Gander Mountain stores it had purchased with bankruptcy court approval. A true and correct copy of this article is attached hereto as **Exhibit “D.”**

27. Pursuant to the foregoing, as early as May 8, 2017 Camping World was already contemplating operating 70 Gander Mountain stores which would, in part, trigger the additional incentive levels metrics for additional bonus compensation to be earned by each of the Key Employees pursuant to the KEIPs and KERPs.

28. In a Twitter issued by Mr. Lemonis on May 8, 2017 he provided an updated list of the Gander Mountain stores that would remain operational. That Twitter message is attached hereto as **Exhibit E.”** That Twitter list identifies no less than 50 stores that Camping World intended to keep open after its successful purchase of the Gander Mountain and Overton’s assets.

29. In a Twitter issued by Mr. Lemonis on May 11, 2017 he provided an updated list of the Gander Mountain stores that would remain operational. That Twitter message is attached hereto as **Exhibit F.”** This Twitter list identifies 64 stores that Camping World intended to keep open after its successful purchase of the Gander Mountain and Overton’s assets. Once again, by opening 64 of the Gander Mountain stores and associated leases that were approved by the Bankruptcy Court, this supports the Key Employees contention that Camping World intended to open at least 60 of the Gander Mountain stores as that number of stores is referenced in both the KEIPs and the KERPs.

30. In a June 30, 2017 press release issued by Camping World Holdings, Inc. (“CWH”) it was reported: “Our original goal was to initially open 70 or more stores, and while our initial list is now less than 70, we are not willing to open stores which we do not believe have a clear path to profitability. Assuming details can be worked out with landlords and final acceptable leases agreed to, the following locations are expected to reopen under the new Gander Outdoors and Overton’s

and Camping World products and services.” The press release identified 57 store locations to remain open while additional leases were being negotiated by Camping World. This same press release also set forth: “in addition to the locations identified above, we are currently pursuing other locations for expansion and expect to announce additional locations and markets in the near term with all of our Gander Outdoors, Overton’s and Camping World offerings.” A copy of the press release is attached hereto as **Exhibit “G.”**

31. On August 10, 2017 Second Quarter Earnings Call for CWH the Company reported 40 – 52 stores. . . 70 stores high end - rent factor has to work - have leverage with landlords.” Pursuant to the foregoing, on August 10, 2018 CWA was still contemplating opening 70 of the Gander Mountain stores.

32. On October 23, 2017 CWH filed its Form S-1 with the United States Securities and Exchange Commission (“SEC”) wherein CWH represented: “contingent on our final lease negotiations, our current plan is to open the initial 15 to 20 Gander Mountain stores, which will be rebranded as Gander Outdoors, by the end of the first quarter of 2018 and another 40 to 45 stores during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2018, with measured growth thereafter. We assumed the 15 Gander Mountain leases on October 6, 201 through the exercise of Designation Rights and expect to enter into new leases directly with the lessors for the other locations.” Pursuant to Form S-1 CWH was still contemplating opening at least 55 – 65 Gander Mountain stores in addition to Overton’s stores. A copy of the pertinent pages is attached hereto as **Exhibit “H.”**

33. At the November 9, 2017 CWH Earnings Conference call, CWH represented that 55 – 65 Gander Outdoor stores to be opened – 15 Gander leases assumed October 6 – contingent on lease negotiations 15 – 20 Gander Outdoors stores by and of the first quarter of 2018, and an additional 40 – 45 Gander Outdoor stores by the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2018.

34. On Mr. Lemonis' Facebook page on January 3, 2018 he read a list of stores to be opened by the end of May 18, 2018 and further set forth that 69 stores were "very solid" – to open, 2 more next week – 5 additional stores still being negotiated with landlords.

35. On January 4, 2018 CWH issued another press release announcing the initial list of Gander Outdoors retail store locations scheduled to be opened and 2018. This press release identified 69 Gander Mountain store locations to be opened under the CWH banner during the course of 2018. A true and correct copy of this press release is attached hereto as **Exhibit "I."**

36. During the course of the February 27, 2018 CWH earnings conference call for the 4<sup>th</sup> Quarter of 2017, Mr. Lemonis commented that CWH had opened its first Gander Outdoor store in December and currently had 11 additional stores up and running. Early trends in the stores were very promising and CWH was seeing healthy early conversion rates of Gander customers and that it was CWH's plan to open nearly 72 Gander Outdoors stores by mid-June, 2018.

37. On March 13, 2018, CWH filed its 10-K with the SEC which represented that CWH planned to operate a total of 74 Gander Outdoors stores by May 2018, and additional Overton's stores. A true and correct copy of the 10 – K form is attached hereto as **"Exhibit I."**

38. On the May 8, 2018 CWH Earnings Conference Call for the first quarter of 2018, Mr. Lemonis disclosed that CWH opened up 42 new Gander locations and that some additional openings were delayed or were the "various ones where we are building full dealerships and all facilities, so there is a retrofit involved."

39. In a June 28, 2018 CWH press release, the company represented that it had recently opened its first Gander RV Sales location in Kenosha, Wisconsin, and expected new Gander RV Sales locations to follow in no less than 34 previously operated Gander Mountain locations.

40. Pursuant to the foregoing, it is readily apparent that CWH contemplated opening at least 35 Gander Mountain stores as of the date of confirmation which would trigger additional compensation for the Key Employees under the **Target** metric set forth in the KEIPs and KERPs.

41. Additionally, pursuant to the foregoing, it is also readily evident that CWH contemplated reopening 60 of the Gander Mountain store locations under the CWH banner, and that the number of store openings might exceed 70 or more, which would trigger the additional bonus compensation set forth in the **Stretch** metric and the **Maximum** metric respectively, contained in each of the KEIPs and KERPs.

42. Presently, there is no way of knowing whether or not the unsecured creditors in this bankruptcy case will receive a distribution of 5% or more of their respective claims given that the claims objection time period has yet to run, and the Liquidating Trustee has recently filed a request to extend the deadline for filing additional claims objections. However, it is noted that the incentive criteria for both the distribution to unsecured creditors and store count is predicated on “the date of confirmation of the Company’s Plan of Reorganization and/or Liquidation (the “Plan”)” per the provisions of the respective KEIPs and KERPs

43. The facts that I have laid out herein are equally, and additionally, applicable to the proofs of claims that Brian Kohlbeck, Joseph Fusaro, Michael Kalck, Ronald Stoupa, Robert Walker, and Eric Jacobsen have filed in this bankruptcy case as well as those to support the proofs of claims filed by the 6 Key Employees that have filed similar proofs of claims.

**FURTHER YOUR AFFIANT SAYETH NAUGHT**

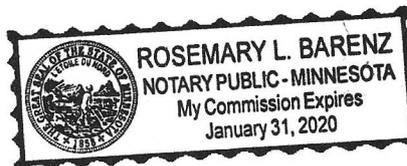


**Darrell ("Jay") Tibbets**



**Notary Public**

Subscribed and sworn to before me this 21<sup>st</sup> day of November,  
2018



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: Case No. 17-30673 (Jointly Administered)  
Case no. 30673(MER)

Gander Mountain Company, Case No. 17-30673  
Overton's, Inc. Case No. 17-30675  
Chapter 11 Cases

Debtor.

---

**ORDER DENYING THE TRUST'S OMNIBUS OBJECTION TO CLAIMS FILED BY  
CERTAIN FORMER KEY EXECUTIVES**

---

This matter is before the Court on the Liquidating Trustee's Motion for an Order Disallowing the Claims of Seven Former Key Employees of Gander Mountain Company. Based on the Motion and the documents, submissions, and arguments of counsel herein,

**IT IS ORDERED:**

1. The Motion is denied
2. The Liquidating Trust may file a separate Adversary Proceeding for determining the allowance or disallowance of the claims of the former Key Executives.

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

\_\_\_\_\_  
The Honorable Michael E. Ridgway  
United States Bankruptcy judge