

**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 LIQUIDATING TRUSTEE'S
THIRTEENTH OMNIBUS MOTION OBJECTING TO
UNTIMELY CLAIMS**

TO: The entities specified in Local Rule 3007-1. **Recipients should review Paragraphs 12 and 14 to locate their names and Claims addressed by this Motion.**

1. The Gander Mountain Liquidating Trust ("Trust") and META Advisors LLC, in its capacity as the liquidating trustee ("Liquidating Trustee") of the Trust, by and through its undersigned counsel, moves the Court ("Motion") for the relief requested below and entry of an order substantially in the form submitted herewith ("Proposed Order"), disallowing Untimely Claims (defined herein), and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at 10:00 a.m. on Wednesday, March 20, 2019, 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, March 15, 2019, 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 Liquidating Trustee 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.

5. This Motion arises under 11 U.S.C. §§ 502, 503 and 506, and is filed under Fed. R. Bankr. P. 3007(d)(4) and Local Rules 3007-1 and 9013-1 through 9013-3.

PROCEDURAL BACKGROUND

6. The petitions commencing these Chapter 11 cases were filed by the above-captioned debtors (“Debtors”) on March 10, 2017 (“Petition Date”).

7. On March 21, 2017, the Court filed a Notice of Chapter 11 Bankruptcy Cases which, among other things, established July 17, 2017 as the deadline by which creditors, including governmental units, must file proofs of claim (“Claims”).

8. On April 12, 2017, the Debtors filed a consolidated set of schedules of assets and liabilities and statement of financial affairs (“Schedules”), setting forth the consolidated assets and liabilities of the Debtors. Additionally, in the ordinary course of business, the Debtors maintained books and records that reflect, among other things, the Debtors’ aggregate liabilities and the specific amounts owed to each of their creditors.

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

10. As set forth in paragraphs 22 through 25 of the Confirmation Order and Article IV.A of the Plan, 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. Specifically, the Plan provides, *inter alia*, that on and after the Effective Date (i) all assets and liabilities of the Debtors are treated as though they are pooled, (ii) each Claim filed or to be filed against either Debtor, as to which both Debtors are co-liable as a legal or contractual matter, is deemed filed as a single Claim against, and single obligation of, the Debtors, (iii) all guarantees of any Debtor of the obligations of the other Debtor are eliminated so that any Claim against any Debtor and any Claim based upon a guarantee thereof executed by the other Debtor is treated as one Claim against the substantively consolidated Debtors, and (iv) any joint or several liability of any of the Debtors is one obligation of the substantively consolidated Debtors and any Claims based upon such joint or several liability is treated as one Claim against the substantively consolidated Debtors.

11. The Plan established the Trust for the purpose of, among other things, collecting and administering all of the Debtors’ assets. The Plan appointed the Liquidating Trustee to administer the Liquidating 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 Claims in accordance with the Plan.

12. The following Claims were filed after the July 17, 2017 deadline for creditors to file a Claim (“Late Claims”):

Claimant	Claim Number	Claim Type	Claim Date	Claim Amount	Classification
David Varrett	18248-1	Non-governmental unit	July 19, 2017	\$5,514.54 n/a ¹	General Unsecured Priority

¹ Varrett lists no amount as entitled to priority but checked the box indicating a proportion of the claim was so entitled.

Jeffrey Wallace	18238-1	Non-governmental unit	July 19, 2017	\$1,040.50	Priority
Cynthia E. Brayton	20206-1	Non-governmental unit	August 18, 2017	\$350.00	Priority
Elizabeth Laukka Recruiting Inc.	21362-1	Non-governmental unit	November 28, 2017	\$12,800	Priority
Texas Comptroller of Public Accounts	20987-2	Governmental-unit	January 17, 2018 (amending claim filed September 28, 2017)	\$242,158.26	Total (\$231,424.68 priority, \$10,733.58 GUC)
Charter Township of Flint (MI)	21681-1	Governmental-Unit	April 30, 2018	\$20,511.45	Administrative
Gaston County Tax Collector	21558-1	Governmental-Unit	February 19, 2018	\$20,030.94	Priority
Union County Tax Collector	21476-1	Governmental Unit	January 12, 2018	\$6,321.06	Priority
Forsythe County Tax Collector	21548-1	Governmental Unit	February 14, 2018	\$9,149.02	Priority

13. Further, pursuant to the Order Granting Expedited Relief and Establishing Procedures for the Resolution of Reclamation Claims and Administrative Claims Asserted Pursuant to Section 503(b)(9) of the Bankruptcy Code filed March 23, 2017 [Docket 211], any creditor asserting an administrative claim under Section 503(b)(9) of the Bankruptcy Code (“Twenty Day Claim”) was required to do so by filing such a claim on or before May 22, 2017 (“Twenty Day Claim Bar Date”). A creditor who failed to file a Twenty Day Claim prior to the Twenty Day Claim Bar Date is forever barred from subsequently seeking such a claim under Section 503(b)(9).

14. The following Claim was filed after the Twenty Day Claim Bar Date had passed (“Late Twenty Day Claims”):

Claimant	Claim Number	Claim Date	Claim Amount	Classification
Fastenal Co.	7340-1	June 6, 2017	\$128.68	Administrative

15. By this Motion, the Liquidating Trustee (1) objects to the allowance of the Late Claims and Late Twenty Day Claims (collectively, the “Untimely Claims”), and (2) requests entry

of an order substantially in the form of the Proposed Order disallowing and expunging the Untimely Claims.

GROUND FOR OBJECTION

16. The Liquidating Trustee objects to each of the Untimely Claims, listed above in Paragraphs 12 and 14, as untimely. The Liquidating Trustee has reviewed the Untimely Claims and has determined that each and every Untimely Claim was untimely filed and thus should not be allowed.

17. The Liquidating Trustee views this Motion as a “housekeeping” matter required by the rules of procedure to ensure that the allowed Claims reflect the amounts that the Debtors’ estate owes.

18. The rights of the Trust and the Liquidating Trustee to: (i) file subsequent objections to any of the 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.

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

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

21. 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).

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

CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order disallowing and expunging the Untimely Claims identified in Paragraphs 12 and 14 of the Motion and granting such other and further relief as this Court deems just and equitable.

Dated: February 15, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

/e/ Christopher J. Knapp
Connie A. Lahn, #0269219
Christopher Knapp, #0344412
Barnes & Thornburg LLP
2800 Capella Tower
225 South Sixth Street
Minneapolis, MN 55402-4662
Telephone: (612) 333-2111
Facsimile: (612) 333-6798
Connie.Lahn@btlaw.com
Christopher.Knapp@btlaw.com

--and—

LOWENSTEIN SANDLER LLP

Jeffrey Cohen

Keara M. Waldron

Scott Cargill

1251 Avenue of the Americas

New York, NY 10020

Telephone: (212) 262-6700

Facsimile: (212) 262-7402

jcohen@lowenstein.com

kwaldron@lowenstein.com

scargill@lowenstein.com

*Counsel for the Gander Mountain
Liquidating Trustee*

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: February 15, 2019

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 LIQUIDATING TRUSTEE'S
THIRTEENTH OMNIBUS MOTION OBJECTING TO UNTIMELY CLAIMS**

The Liquidating Trustee objects to the Claims identified in Paragraphs 12 and 14 of the Liquidating Trustee's Thirteenth Omnibus Motion Objecting to Untimely Claims ("Motion"), and requests that this Court enter an order disallowing and expunging the Amended 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.

ARGUMENT

A proof of claim filed in a bankruptcy proceeding is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a); *see also Gran v. IRS (In re Gran)*, 964 F.2d 822, 827 (8th Cir. 1992). If an objection is filed, the objector must come forward with evidence rebutting the Claim. *Gran*, 964 F.2d at 827; *In re Oriental Rug Warehouse Club, Inc.*, 205 B.R. 407, 410 (Bankr. D. Minn. 1997). If the objecting party produces such evidence, the burden of proof shifts to the claimant to produce evidence of the validity of the Claim. *Gran*, 964 F.2d at 827; *Oriental Rug*, 205 B.R. at 410. "In other words, once an objection is made to the proof of claim, the ultimate

burden of persuasion as to the claim's validity and amount rests with the claimant." *Oriental Rug*, 205 B.R. at 410 (citations omitted). In making these determinations, a court looks to the governing substantive law. *In re Ford*, 125 B.R. 735, 737 (E.D. Tex. 1991); *In re Gridley*, 149 B.R. 128, 132 (Bankr. D.S.D. 1992).

Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1). Further, Section 502(b)(9) provides, in relevant part, that a claim may not be allowed to the extent that the "proof of claim is not timely filed." 11 U.S.C. § 502(b)(9). In a Chapter 11 bankruptcy, a non-governmental unit creditor asserting a claim must file a proof of claim prior to the deadline as set by the court, often referred to as a bar date. Fed. R. Bankr. P. 3003(c)(3). Additionally, a governmental unit creditor asserting a claim must file a proof of claim prior to "180 days after the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide." 11 U.S.C. § 502(b)(9).

In general, a claim filed passed a bar date set by a court is only allowed where the creditor can show excusable neglect. *In re Standard Insulations, Inc.*, 138 B.R. 947, 956 (W.D. Mo. 1992) (citing *In re Analytical Sys., Inc.*, 933 F.2d 939, 942 (11th Cir. 1991)). Excusable neglect is generally narrowly defined within the Eighth Circuit, and limited to "circumstances which are beyond the reasonable control of the person whose duty it is to perform." *Id.* (quoting *Hanson v. First Bank of South Dakota*, 828 F.2d 1310, 1314 (8th Cir. 1987)). Further, to be timely, a claim must be *received* by the bar date set by a court. *Id.* at 957 (citing *Chrysler Motors Corp. v. Schneiderman*, 940 F.2d 911, 914 (3d Cir. 1991)).

The Liquidating Trustee objects to the allowance of the Claims submitted by the listed non-governmental claimants identified in Paragraph 12 of the Motion ("Late Claims") on the grounds

that the Late Claims were untimely filed. The bar date by which a creditor's proof of claim must have been received by the Court was set for July 17, 2017, and was not extended at any point. [Dkt. 183]. Additionally, the governmental creditors' claims identified in Paragraph 12 were untimely filed because they were not received before September 6, 2017, which was 180 days after the petition filing. [Dkt. 1].

The Liquidating Trustee objects to the allowance of Claims identified in Paragraph 12 of the Motion ("Late Claims"). Each of these Claims were filed after their respective bar dates as set by the Court. That is, the non-governmental unit creditors, so identified, filed their proofs of claims after the July 17, 2017 bar date. Additionally, the governmental unit creditors, so identified, filed their proof of claims after September 6, 2017. The Trustee has reviewed each of the Late Claims and determined that they were each untimely filed and thus must be disallowed and expunged in their entirety. Last, none of the creditors located within Paragraph 12 have offered any indication of excusable neglect which would authorize such their late filings.

The Liquidating Trustee additionally objects to the allowance of Claims identified in Paragraph 14 of the Motion ("Late Twenty Day Claims"). In the Amended Order Granting Expedited Relief and Establishing Procedures for the Resolution of Reclamation Claims and Administrative Claims Asserted Pursuant to Section 503(b)(9) of the Bankruptcy Code filed March 23, 2017 ("Twenty Day Order"), the Court held that all creditors asserting claims under Section 503(b)(9) of the Bankruptcy Code must do so on or before May 22, 2017. The Late Twenty Day Claims were filed after the May 22, 2017 deadline established by the Court in the Twenty Day Order, and thus are disallowed from asserting rights under Section 503(b)(9) of the Bankruptcy Code.

Accordingly, the Liquidating Trustee (1) objects to the allowance of the Late Claims and Late Twenty Day Claims (collectively, the “Untimely Claims”) and (2) seeks entry of an order substantially in the form of the Proposed Order disallowing and expunging in their entirety the Untimely Claims.

SEPARATE CONTESTED MATTERS

To the extent a Response is filed regarding any individual Untimely Claim listed in the Motion and the Liquidating Trustee is unable to resolve the Response, the Liquidating Trustee requests that the Motion as it pertains to such Untimely Claims shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. The Liquidating Trustee requests that any order entered by the Court regarding a Response asserted in the Motion be deemed a separate order with respect to each Claim subject thereto.

CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order (1) disallowing and expunging the Untimely Claims, and (2) allowing such other and further relief as is just and equitable.

Dated: February 15, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

/e/ Christopher J. Knapp
Connie A. Lahn, #0269219
Christopher Knapp, #0344412
Barnes & Thornburg LLP
2800 Capella Tower
225 South Sixth Street
Minneapolis, MN 55402-4662
Telephone: (612) 333-2111
Facsimile: (612) 333-6798
Connie.Lahn@btlaw.com
Christopher.Knapp@btlaw.com

--and--

LOWENSTEIN SANDLER LLP
Jeffrey Cohen
Keara M. Waldron
Scott Cargill
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 262-6700
Facsimile: (212) 262-7402
jcohen@lowenstein.com
kwaldron@lowenstein.com
scargill@lowenstein.com

*Counsel for the Gander Mountain
Liquidating Trustee*

**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 LIQUIDATING TRUSTEE'S
THIRTEENTH OMNIBUS MOTION OBJECTING TO
AMENDED CLAIMS**

This matter is before the Court on the Gander Mountain Liquidating Trust ("Trust") and META Advisors LLC, in its capacity as the liquidating trustee ("Liquidating Trustee") of the Trust's Motion Objecting to Amended Claims ("Motion"). Based on the Motion and the documents of record herein,

IT IS ORDERED:

1. The Motion is granted.
2. The claims identified in the following chart are hereby disallowed and expunged in their entirety:

Claimant	Claim Number	Claim Type	Claim Date	Claim Amount	Classification
David Varrett	18248-1	Non-governmental unit	July 19, 2017	\$5,514.54 n/a ²	General Unsecured Priority
Jeffrey Wallace	18238-1	Non-governmental unit	July 19, 2017	\$1,040.50	Priority
Cynthia E. Brayton	20206-1	Non-governmental unit	August 18, 2017	\$350.00	Priority

² Varrett lists no amount as entitled to priority but checked the box indicating a proportion of the claim was so entitled.

Elizabeth Laukka Recruiting Inc.	21362-1	Non-governmental unit	November 28, 2017	\$12,800	Priority
Texas Comptroller of Public Accounts	20987-2	Governmental-unit	January 17, 2018 (amending claim filed September 28, 2017)	\$242,158.26	Total (\$231,424.68 priority, \$10,733.58 GUC)
Charter Township of Flint (MI)	21681-1	Governmental-Unit	April 30, 2018	\$20,511.45	Administrative
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Union County Tax Collector	21476-1	Governmental Unit	January 12, 2018	\$6,321.06	Priority
Forsythe County Tax Collector	21548-1	Governmental Unit	February 14, 2018	\$9,149.02	Priority

3. The Trust and the Liquidating Trustee expressly reserve the rights to: (i) file subsequent objections to any of the 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. Additionally, should the grounds of objection stated in the Motion be overruled, the Liquidating Trustee’s rights to object to the claims on any other grounds are preserved.

4. To the extent the claims are also the subject of a separate claim objection, or become subject 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. For the avoidance of doubt, nothing in the Motion or this Order impacts in any way the Liquidating Trustee’s pending objection to any claim under section 502(d) of the Bankruptcy Code included in any complaint filed pursuant to section 5 of the Bankruptcy Code.

6. The objection to each claim, as addressed in the Motion and as set forth in the chart above, constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. This

Order shall be deemed a separate order with respect to each such claim that is the subject of the Motion. Any stay of this Order pending appeal by any claimants whose claims are subject to this Order shall only apply to the contested matter that involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to any other contested matters addressed in the Motion and this Order.

7. 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.

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

Dated: _____, 2019.

Judge Michael E. Ridgway
United States Bankruptcy Judge