

**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
MOTION OBJECTING TO THE CLAIM OF SAGINAW COUNTY, MICHIGAN**

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

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"), reducing the claim submitted by Saginaw County, Michigan ("Saginaw County") and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at 10:00 a.m. on Wednesday, May 22, 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, May 17, 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 and 507, and is filed under Fed. R. Bankr. P. 3007(d)(6) 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 (the “Debtors”) on March 10, 2017 (the “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.

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. On August 14, 2017, Saginaw County filed its proof of claim, identified as claim number 20045-1. On April 2, 2018, Saginaw County amended its claim, identified as claim number 21670-1 (the "Saginaw County Claim"). On September 15, 2017, Saginaw County withdrew its claim no. 20045-1. [Dkt. No. 1226]. The Saginaw County Claim asserts Saginaw County is owed a total amount of \$9,529.57, all of which is asserted as secured.

13. The Saginaw County Claim arises from ad valorem property taxes which Saginaw County alleges remain due and owing by the Debtors.

14. The amount submitted in the Saginaw County Claim arises from property taxes that remain due and owing, combined with interest and penalties asserted by Saginaw County. Based upon the Liquidating Trustee's analysis of the Debtors' book and records, the Liquidating Trustee has determined that the Debtors are only liable for the base tax amount of \$9,075.78, arising from the property tax due and owing, all of which is entitled to secured status under 11 U.S.C. § 506(c). The Trust therefore objects to the Saginaw County Claim to the extent that Saginaw County asserts it is owed any amounts greater than this amount, and thus all amounts claimed by Saginaw County greater than \$9,075.78 in secured amounts should be disallowed entirely.

15. By this Motion, the Liquidating Trustee (1) objects to the Saginaw County Claim to the extent that it claims any amount greater than \$9,075.78 in secured amounts entitled to secured status under 11 U.S.C. § 506(c) and (2) requests entry of an order substantially in the form of the Proposed Order disallowing all amounts asserted by Saginaw County greater than \$9,075.78.

GROUND FOR OBJECTION

16. The Saginaw County Claim asserts that the Debtors owe Saginaw County \$9,529.57, all of which is asserted as secured under 11 U.S.C. § 506(c). The amount proffered in the Saginaw County Claim was based upon Saginaw County's property taxes combined with interest and penalties Saginaw County asserts remain due and owing.

17. The Liquidating Trustee objects to the Saginaw County Claim because it has reviewed the Debtors' books and records and determined that the Debtors are not liable for the penalties and interest asserted by Saginaw County. Thus, this amount should be disallowed entirely, and the Saginaw County Claim should be reduced to \$9,075.78, which is the base tax

amount due and owing by the Debtors, all of which is for the property tax due and owing, thus, entitled to secured status under 11 U.S.C. § 506(c). Thus, any amount greater than \$9,075.78 in secured amounts should be disallowed entirely.

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

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

20. 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 substantially in the form of the Proposed Order reducing the Saginaw County Claim to \$9,075.78, all of which is for the property tax due and owing, thus, entitled to secured status under 11 U.S.C. § 506(c); and disallowing all amounts claimed by Saginaw County greater than this amount.

Dated: April 22, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

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*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: April 22, 2019

By: James Hunt

**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
MOTION OBJECTING TO THE CLAIM OF SAGINAW COUNTY, MICHIGAN**

The Liquidating Trustee objects to the claim submitted by Saginaw County, Michigan ("Saginaw County"), identified by claim number 21670-1 (the "Saginaw County Claim"), and requests that this Court enter an order reducing the Saginaw County Claim to the amount of \$9,075.78, all of which is for the property tax due and owing, thus, entitled to secured status under 11 U.S.C. § 506(c), and disallowing all amounts asserted by Saginaw County greater than this amount.

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*, 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).

Saginaw County’s assertion that \$9,529.57 is due and owing as a secured claim under the Saginaw County Claim is inaccurate, and the Debtors have no liability for all amounts claimed by Saginaw County greater than \$9,075.78, all of which is entitled to secured status under 11 U.S.C. § 506(c). Thus, all amounts claimed by Saginaw County greater than this amount should be disallowed. The Liquidating Trustee’s professionals have compared the Debtors’ books and records to the Saginaw County Claim, reviewed the claims register, and conducted further analysis, and determined that all amounts claimed by Saginaw County greater than \$9,075.78 should be disallowed. All amounts greater than \$9,075.78 have been confirmed, via books and records review, as not being due to Saginaw County. The remaining amounts of \$9,075.78 is entitled to secured status under 11 U.S.C. § 506(c).

Accordingly, the Liquidating Trustee (1) objects to the Saginaw County Claim to the extent that it claims any amount greater than \$9,075.78, all of which is for the property tax due and owing, thus, entitled to secured status under 11 U.S.C. § 506(c); and (2) requests entry of an order substantially in the form of the Proposed Order disallowing all amounts asserted by Saginaw County greater than \$9,075.78.

CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order (1) disallowing all amounts asserted by the Saginaw County Claim greater than \$9,075.78, all of which is for the property tax due and owing, thus, entitled to secured status under 11 U.S.C. § 506(c); and (2) allowing such other and further relief as is just and equitable.

Dated: April 22, 2019

Respectfully Submitted,

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Liquidating Trustee*

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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
MOTION OBJECTING TO THE CLAIM OF SAGINAW COUNTY, MICHIGAN**

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")'s Motion ("Motion") Objecting to the Claim of the Saginaw County, Michigan ("Saginaw County") on the basis that all amounts claimed by Saginaw County greater than \$9,075.78 should be disallowed to match the amount currently due and owing under the Debtors' books and records.

IT IS ORDERED:

1. The Motion is granted.
2. Saginaw County's claim, identified as claim number 21670-1 (the "Saginaw County Claim"), is hereby reduced to the amount of \$9,075.78, all of which is entitled to secured status under 11 U.S.C. § 506(c); and any amounts asserted by the Saginaw County Claim in an amount greater than \$9,075.78 is hereby disallowed entirely.
3. 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.

4. 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