

**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
TWENTY-SECOND OMNIBUS MOTION OBJECTING TO
UNTIMELY PRIORITY CLAIMS**

TO: The entities specified in Local Rule 3007-1. **Recipients should review Paragraph 12 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 Priority 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, July 17, 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, July 12, 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 507, 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 [Docket No. 183].

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 (“Untimely Priority Claims”):

Claimant	Claim Number	Claim Date	Claim Amount	Classification
Village of Rothschild, Wisconsin	21581-1	02/26/2018	\$37,948.07	Priority
Dougherty County Tax Department, Georgia	21692-1	05/15/2018	\$62,067.27	Priority
Arkansas Department of Finance and Administration	20966-1	09/26/2017	\$122.85 \$12.10 \$134.95	Priority GUC Total

13. The Debtors either did not include the Untimely Priority Claims in the Schedules, or scheduled them in the amount of \$0.00.

14. By this Motion, the Liquidating Trustee (1) objects to the allowance of the Untimely Priority Claims, and (2) requests entry of an order substantially in the form of the Proposed Order disallowing and expunging the Untimely Priority Claims.

GROUND FOR OBJECTION

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

16. 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.

17. The rights of the Trust and the Liquidating Trustee to: (i) file subsequent objections to any of the Untimely Priority 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 Untimely Priority Claim to the extent all or a portion of such Untimely Priority Claim has been paid; and (iv) settle any Untimely Priority Claim for less than the asserted amount, are expressly preserved.

18. To the extent that any portion of any of the Untimely Priority 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.

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

20. 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).

21. Pursuant to Local Rule 9013-2(c), the Liquidating Trustee gives notice that if an evidentiary hearing is held, it may, if necessary, call (a) James Carr or James Hunt of META Advisors LLC, whose business address is 101 Park Avenue, 30th Floor, New York, New York 10178; (b) Dana P. Kane, of Kelley Drye & Warren LLP, whose business address is One Jefferson Road, 2nd Floor, Parsippany, New Jersey 07054; and/or (c) 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 Priority Claims identified in Paragraph 12 of the Motion and granting such other and further relief as this Court deems just and equitable.

Dated: June 6, 2019

Respectfully Submitted,

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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: June 4, 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
TWENTY-SECOND OMNIBUS MOTION OBJECTING TO UNTIMELY PRIORITY
CLAIMS**

The Liquidating Trustee objects to the claims identified in Paragraph 12 of the Liquidating Trustee's Twenty-Second Omnibus Motion Objecting to Untimely Priority Claims ("Motion"), and requests that this Court enter an order disallowing and expunging the Untimely Priority 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 after a bar date set by a court is only allowed when the creditor can show excusable neglect. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 389, 113 S. Ct. 1489, 1495, 123 L. Ed. 2d 74 (1993). Excusable neglect is generally narrowly defined and limited to "late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond a party's control." *Id.* at 1495 ("[W]e give little weight to the fact that counsel was experiencing upheaval in his law practice at the time of the bar date"); *Hanson v. First Bank*, 828 F.2d 1310, 1314-15 (8th Cir. 1987) (abuse of discretion standard; employee turnover not excusable neglect under Bankr. R. 9006(b)(1)); *Clinkscales v. Chevron U.S.A. Inc.*, 831 F.2d 1565, 1569 (11th Cir. 1987) (attorney's busy practice not excusable neglect under Fed. R. Civ. P. 6(b)). *Cf. Selph v. Council of Los Angeles*, 593 F.2d 881, 883 (9th Cir. 1979)

(confusion from moving law offices not excusable neglect under Fed. R. App. P. 4(a)). Further, to be timely, a claim must be *received* by the bar date set by a court. *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 governmental claimants identified in Paragraph 12 of the Motion (“Untimely Priority Claims”) on the grounds that the Untimely Priority Claims were filed after the Court established deadline. The bar date by which a creditor’s, including governmental units, proof of claim must have been received by the Court was July 17, 2017. [Dkt. 183]. This proof of claim bar date was not extended at any point. The Liquidating Trustee has reviewed each of the Untimely Priority Claims and has determined that they each were untimely filed and thus must be disallowed and expunged in their entirety. None of the creditors listed in Paragraph 12 has offered any indication of excusable neglect that would authorize its late filing.

Accordingly, the Liquidating Trustee (1) objects to the allowance of the Untimely Priority Claims and (2) seeks entry of an order substantially in the form of the Proposed Order disallowing and expunging in their entirety each of the Untimely Priority Claims.

SEPARATE CONTESTED MATTERS

To the extent a Response is filed regarding any individual Untimely Priority 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 Priority 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 Untimely Priority Claim subject thereto.

CONCLUSION

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

Dated: June 6, 2019

Respectfully Submitted,

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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
TWENTY-SECOND OMNIBUS MOTION OBJECTING TO
UNTIMELY PRIORITY 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 Untimely Priority 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 (“Untimely Priority Claims”) are each hereby disallowed and expunged in their entirety:

Claimant	Claim Number	Claim Date	Claim Amount	Classification
Village of Rothschild, Wisconsin	21581-1	02/26/2018	\$37,948.07	Priority
Dougherty County Tax Department, Georgia	21692-1	05/15/2018	\$62,067.27	Priority
Arkansas Department of Finance and Administration	20966-1	09/26/2017	\$122.85 \$12.10 \$134.95	Priority GUC Total

3. The objection to each Untimely Priority 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 Untimely

Priority 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.

4. 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.

5. 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