

**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
THE INDIANA DEPARTMENT OF REVENUE**

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, (1) moves the Court ("Motion") for the relief requested below and entry of an order substantially in the form submitted herewith ("Proposed Order") disallowing and expunging the amended claim filed by the Indiana Department of Revenue and reducing and allowing the remaining claim submitted by the Indiana Department of Revenue, (2) 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 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 May 31, 2017, the Indiana Department of Revenue filed a proof of claim, identified as claim number 3897-1 (the "Original Claim"). The Original Claim asserts a total amount of \$282,345.44, with \$257,289.06 asserted as being entitled to priority status under 11 U.S.C. § 507.

13. On December 19, 2018, the Indiana Department of Revenue filed another proof of claim, identified as claim number 3897-2 (the “Indiana Claim”), which amends and supersedes the Original Claim. The Indiana Claim asserts a total of \$134,223.36, with the following claim classifications:

- \$129,053.36 asserted as a priority claim under 11 U.S.C. § 507;
- \$5,170.00 asserted as a general unsecured claim.

14. The Indiana Claim arises from retail sales taxes that the Indiana Department of Revenue alleges remain due and owing by the Debtors.

15. Based upon the Liquidating Trustee’s analysis of Debtors’ book and records and Section 507(a)(8)(E) of the Bankruptcy Code, the Liquidating Trustee has determined that the actual amount due is \$85,169.62, with the following claim classifications:

- \$66,131.41 of the total allowed amount entitled to priority status; and
- \$19,038.21 of the total allowed amount as a general unsecured claim.

16. The Liquidating Trustee therefore objects to the Indiana Claim to the extent that the Indiana Department of Revenue asserts it is entitled to a total amount greater than this amount, and thus all amounts claimed by the Indiana Department of Revenue greater than \$66,131.41 in priority amounts and \$19,038.21 in general unsecured amounts should be disallowed entirely.

17. By this Motion, the Liquidating Trustee (1) objects to the allowance of the Original Claim in its entirety; (2) objects to the Indiana Claim to the extent that it asserts any amount greater than \$66,131.41 in priority amounts and greater than \$19,038.21 in general unsecured amounts; and (3) requests entry of an order substantially in the form of the Proposed Order disallowing and expunging the Original Claim and reducing and allowing the Indiana Claim to \$66,131.41 in priority amounts and \$19,038.21 in general unsecured amounts.

GROUND FOR OBJECTION

18. The Liquidating Trustee objects to the Original Claim, identified above in Paragraph 12, as amended and superseded by a subsequently filed proof of claim. The Liquidating Trustee has reviewed the Original Claim and has determined that the Original Claim is amended and superseded by the Indiana Claim.

19. The Original Claim no longer represents a valid claim against the Debtors' estates. Accordingly, if the Original Claim is not formally expunged or disallowed, the potential exists for a double recovery for the applicable claimants to the detriment of other creditors in these cases. The disallowance of the Original Claim will also result in a more streamlined and accurate claims register.

20. The Indiana Claim asserts that the Debtors owe the Indiana Department of Revenue a total of \$134,223.36, with the following claim classifications:

- \$129,053.36 asserted as a priority claim under 11 U.S.C. § 507;
- \$5,170.00 asserted as a general unsecured claim.

21. The Indiana Claim asserts, in part, \$49,053.74 for the period ending on January 31, 2001. The Liquidating Trustee objects to this asserted amount because Debtors' books and records show no liability for this asserted amount and the Indiana Claim does not include sufficient documentation to support this asserted amount.

22. Additionally, the Indiana Claim asserts, in part, \$32,799.51 for the period ending on December 31, 2013. According to Debtors' books and records and under 11 U.S.C § 507(a)(8), the tax assessment for that period is an assessment of use tax on purchases and should be reduced and reclassified to the following:

- a priority claim in the amount of \$14,011.30; and
- a general unsecured claim in the amount of \$18,788.21.

23. This priority amount combined with the tax assessments for the periods ending on December 31, 2014 and December 31, 2015, entitle the Indiana Department of Revenue to a priority claim in the total amount of \$66,131.41. This general unsecured amount combined with the penalty and fees for the period ending on January 28, 2017, in the amount of \$250.00, entitle the Indiana Department of Revenue to a general unsecured claim in the amount of \$19,038.21.

24. Thus, the Liquidating Trustee objects to the Indiana Claim because it has reviewed the Debtors' books and records and applicable provisions of the Bankruptcy Code and determined that the actual amount due and is \$85,169.62, with the following claim classifications:

- \$66,131.41 of the total allowed amount entitled to priority status; and
- \$19,038.21 of the total allowed amount as a general unsecured claim.

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

26. 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).

27. 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.

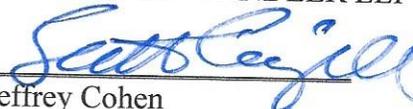
CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order substantially in the form of the Proposed Order (1) disallowing and expunging the Original Claim identified in Paragraph 12 of the Motion; (2) reducing and allowing the Indiana Claim in the amount of \$85,169.62, of which the amount of \$66,131.41 is classified as a priority claim and \$19,038.21 is classified as a general unsecured claim

Dated: June 17, 2019

Respectfully Submitted,

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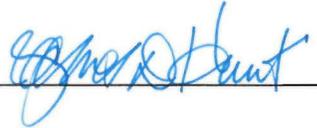
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*Counsel for the Gander Mountain
Liquidating Trustee*

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 17, 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
MOTION OBJECTING TO THE CLAIM OF
THE INDIANA DEPARTMENT OF REVENUE**

The Liquidating Trustee objects to the two claims submitted by the Indiana Department of Revenue, and requests that this Court enter an order expunging and disallowing the Original Claim and reducing and allowing the Indiana Claim to \$66,131.41 in priority amounts under 11 U.S.C. § 507(a)(8) and \$19,038.21 in general unsecured amounts.

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 507(a)(8)(E) of the Bankruptcy Code provides that "an excise tax on – (i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or (ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition" is entitled to priority status. 11 U.S.C. § 507(a)(8)(E). "Excise taxes are priority claims only if incurred during the three years immediately prior to petition filing under § 507(a)(8)(E). Thus, excise taxes that are more than three years old at the time of petition filing are not priority claims and are consequently dischargeable." *In re McDonough*, 346 B.R. 492, 494 (Bankr. S.D. Iowa 2006).

The Liquidating Trustee objects to the allowance of the Original Claim identified in Paragraph 12 of the Motion ("Original Claim") because it is amended and superseded by a subsequently filed proof of claim, and therefore, is not enforceable. The Liquidating Trustee has reviewed the Original Claim and has determined that it is amended and superseded by the Indiana Claim (defined herein). If the Original Claim is not formally expunged or disallowed, the potential exists for a double recovery for the applicable claimant. The disallowance of the Original Claim will also result in a more streamlined and accurate claims register.

Additionally, the Indiana Department of Revenue asserts that \$49,053.74 of its Indiana Claim, for the period ending on January 31, 2001, is entitled to priority status under 11 U.S.C. § 507. This is inaccurate. The Liquidating Trustee's professionals have compared the

Debtors' books and records to the Indiana Claim, reviewed the claims register, and conducted further analysis, and have determined that the Debtors have no liability for the portion of the Indiana Claim in the amount of \$49,053.74. Therefore, this portion of the Indiana Claim should be disallowed.

Further, pursuant to Sections 507(a)(8)(E) of the Bankruptcy Code, only \$66,131.41 of the Indiana Claim is entitled to priority status. The Liquidating Trustee's professionals have compared the Debtors' books and records to the Indiana Claim, reviewed the claims register, and conducted further analysis, and determined that the Indiana Claim asserts priority status for certain sales and use taxes that are beyond the three-year lookback period for excise tax under Section 507(a)(8)(E) of the Bankruptcy Code, and thus are not entitled to priority status.

Therefore, the Original Claim should be disallowed and expunged in its entirety, \$49,053.74 of the Indiana Claim should be disallowed, \$18,788.21 of the Indiana Claim should be reclassified as a general unsecured claim to bring the general unsecured claim amount to a total of \$19,038.21, and the remaining \$66,131.41 of the Indiana Claim should be entitled to priority status under 11 U.S.C. § 507.

Accordingly, the Liquidating Trustee (1) objects to the allowance of the Original Claim in its entirety; (2) objects to the Indiana Claim to the extent that it asserts any amount greater than \$66,131.41 in priority amounts and greater than \$19,038.21 in general unsecured amounts; and (3) requests entry of an order substantially in the form of the Proposed Order disallowing and expunging the Original Claim and reducing and allowing the Indiana Claim in the amount of \$85,169.62, of which the amount of \$66,131.41 is classified as a priority claim and \$19,038.21 is classified as a general unsecured claim.

CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order (1) disallowing and expunging the Original Claim and (2) reducing and allowing the Indiana Claim in the amount of \$85,169.62, of which the amount of \$66,131.41 is classified as a priority claim and \$19,038.21 is classified as a general unsecured claim.

Dated: June 17, 2019

Respectfully Submitted,

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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

**ORDER GRANTING THE LIQUIDATING TRUSTEE'S
MOTION OBJECTING TO THE CLAIM OF
THE INDIANA DEPARTMENT OF REVENUE**

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 claims of the Indiana Department of Revenue on the basis that one claim has been amended and superseded and the other claim should be reduced and allowed to match the amount currently due and owing under the Debtors' books and records and Section 507 of the Bankruptcy Code.

IT IS ORDERED:

1. The Motion is granted.
2. The Indiana Department of Revenue's claim, identified as claim number 3897-1, is hereby expunged and disallowed in its entirety.
3. The Indiana Department of Revenue's claim, identified as claim number 3897-2, is hereby reduced and allowed in the total amount of \$85,169.62, with the following claim classifications: (1) \$66,131.41 of the total allowed amount is entitled to priority status under 11 U.S.C. § 507; and (2) \$19,038.21 of the total allowed amount is a general unsecured claim.

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