

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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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

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**NOTICE OF HEARING AND LIQUIDATING TRUSTEE'S  
MOTION OBJECTING TO THE CLAIM OF JOHNSON COUNTY TREASURER**

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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"), reclassifying and allowing the claim submitted by Johnson County Treasurer ("Johnson County") and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at 10:00 a.m. on Thursday, August 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 Saturday, August 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 June 6, 2017, Johnson County filed its proof of claim, identified as claim number 11757-1 (the "Johnson County Claim"). Johnson County asserts it is owed a total amount of \$11,226.96, all of which is asserted as secured.

13. The Johnson County Claim arises from personal property taxes which Johnson County alleges remain due and owing by the Debtors.

14. Personal property taxes in Indiana are not entitled to secured status because there is no automatic lien provision for personal property in the state property tax statute. *See generally* IC 6-1.1. Additionally, Johnson County has not taken any steps under applicable law to attempt to secure an interest in the Debtors' property.

15. Based upon the Liquidating Trustee's review and analysis of the Johnson County Claim and the Debtors' book and records, the Liquidating Trustee has determined that the actual claim status for the Johnson County Claim is priority rather than secured. The Trust therefore objects to the Johnson County Claim to the extent that Johnson County asserts it is entitled to secured status.

16. By this Motion, the Liquidating Trustee (1) objects to the Johnson County Claim to the extent that it asserts it is 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 reclassifying and allowing the Johnson County Claim in the amount of \$11,226.96, all of which is entitled to priority status under 11 U.S.C. § 507.

#### **GROUND FOR OBJECTION**

17. The Johnson County Claim asserts that the Debtors owe Johnson County \$11,226.96, all of which, Johnson County asserts, is entitled to secured status under 11 U.S.C. § 506(c).

18. The Liquidating Trustee objects to the Johnson County Claim because it has reviewed the Johnson County Claim and Debtors' books and records and determined that the

Johnson County Claim is entitled to priority rather than secured status. Thus, the Trust objects to the Johnson County Claim to the extent that Johnson County asserts it is entitled to secured status.

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 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; (2) Dana P. Kane, of Kelley Drye & Warren LLP, whose business address is One Jefferson Road, 2nd Floor, Parsippany, New Jersey 07054; (3) 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 reclassifying the Johnson County Claim to priority status in the amount of \$11,226.96.

Dated: July 23, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

*/e/ Christopher J. Knapp*  
Connie A. Lahn, #0269219  
Christopher Knapp, #0344412  
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: July 23, 2019

By: 

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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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

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**MEMORANDUM OF LAW IN SUPPORT OF THE LIQUIDATING TRUSTEE'S  
MOTION OBJECTING TO THE CLAIM OF JOHNSON COUNTY TREASURER**

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The Liquidating Trustee objects to the claim submitted by Johnson County Treasurer ("Johnson County"), identified by claim number 11757-1 (the "Johnson County Claim"), and requests that this Court enter an order reclassifying the Johnson County Claim to priority status in the amount of \$11,226.96.

**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).

Johnson County's assertion that it is entitled to a secured claim under the Johnson County Claim is inaccurate. The Johnson County Claim is for personal property taxes, and personal property taxes in Indiana are not entitled to secured status because there is no automatic lien provision for personal property in the state property tax statute. *See generally* IC 6-1.1. Additionally, Johnson County has not taken any steps under applicable law to attempt to secure an interest in the Debtors' property. The Liquidating Trustee's professionals have compared the Debtors' books and records to the Johnson County Claim, reviewed the claims register, and conducted further analysis, and determined that all amounts claimed by Johnson County are entitled to priority status under 11 U.S.C. § 507.

Accordingly, the Liquidating Trustee (1) objects to the Johnson County Claim to the extent that it asserts it is 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 reclassifying all amounts asserted by Johnson County to priority status under 11 U.S.C. § 507.

**CONCLUSION**

The Liquidating Trustee respectfully requests that the Court enter an order (1) reclassifying the Johnson County Claim to priority status in the amount of \$11,226.96; and (2) allowing such other and further relief as is just and equitable.

Dated: July 23, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

*/s/ Christopher J. Knapp*

Connie A. Lahn, #0269219  
Christopher Knapp, #0344412  
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  
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**CERTIFICATE OF SERVICE OF THE LIQUIDATING TRUSTEE'S  
MOTION OBJECTING TO THE CLAIM OF JOHNSON COUNTY TREASURER**

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I, Christopher Knapp, declare under penalty of perjury that on July 23, 2019, I served copies of the Liquidating Trustee's Motion Objecting to the Claim of Johnson County Treasurer by sending a true and correct copy of each document by U.S. Mail, as indicated, to the following recipients:

Office of the U.S. Trustee 300 South Fourth Street Suite 1015 Minneapolis, MN 55402	Johnson County Treasurer 86 West Court Street Franklin, IN 46131
Fredrikson & Byron, P.A. Clint Cutler Suite 4000 200 South Sixth Street Minneapolis, MN 55402	Gander Mountain Company and Overton's, Inc. Lighthouse Management Group, Inc. Attn: Timothy Becker 990 Long Lake Road, Suite 180 New Brighton, MN 55112

Dated: July 23, 2019

BARNES & THORNBURG LLP

/s/ Christopher J. Knapp  
Christopher J. Knapp, #0344412  
2800 Capella Tower  
225 South Sixth Street  
Minneapolis, MN 55402-4662  
Telephone: (612) 333-2111  
Facsimile: (612) 333-6798  
Christopher.Knapp@btlaw.com

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In re:	Jointly Administered Under Case No. 17-30673 (MER)
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**ORDER GRANTING THE LIQUIDATING TRUSTEE'S  
MOTION OBJECTING TO THE CLAIM OF JOHNSON COUNTY TREASURER**

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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 Johnson County Treasurer ("Johnson County") on the basis that the Johnson County Claim should be reclassified to priority status.

**IT IS ORDERED:**

1. The Motion is granted.
2. Johnson County's claim, identified as claim number 11757-1 (the "Johnson County Claim"), is hereby allowed in the amount of \$11,226.96, all of which is entitled to priority status under 11 U.S.C. § 507.
3. Any subsequent amendments to the claim are hereby expunged and disallowed in their entirety.
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.

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Judge Michael E. Ridgway  
United States Bankruptcy Judge