

**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 OHIO BUREAU OF WORKERS' COMPENSATION**

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"), disallowing and expunging the Ohio Claim (defined herein) in its entirety and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at 10:00 a.m. on Wednesday, October 23, 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, October 18, 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 11, 2017, the Ohio Bureau of Workers' Compensation filed its proof of claim, identified as claim number 529-1. On August 31, 2017, the Ohio Bureau of Workers' Compensation later amended its claim, identified as claim number 529-2 (the "Ohio Claim"). The Ohio Bureau of Workers' Compensation asserts it is owed \$34,226.81, all of which is asserted as a priority claim under 11 U.S.C. § 507(a)(8).

13. The Ohio Claim further asserts that the amounts due arise from workers' compensation premiums due pursuant to Ohio Revised Code 4123.35.

14. Based upon the Liquidating Trustee's analysis of the Ohio Claim and Debtors' book and records, the Liquidating Trustee has determined that the amount asserted by the Ohio Claim is based upon the Ohio Bureau of Workers' Compensation's estimation of the maximum premium amount for two pre-petition years and was submitted without a reconciliation against the actual claims filed. Unlike in prior years, the Ohio Bureau of Workers' Compensation did not provide audit information; therefore, the actual amount of the estimated premiums has not been confirmed or reconciled, and therefore, it should be disallowed and expunged in its entirety.

15. By this Motion, the Liquidating Trustee (1) objects to the Ohio Claim as an unreconciled and unsubstantiated estimation; and (2) requests entry of an order substantially in the form of the Proposed Order disallowing and expunging the Ohio Claim in its entirety.

GROUND FOR OBJECTION

16. The Ohio Claim asserts that the Debtors owe the Ohio Bureau of Workers' Compensation \$34,226.81, all of which is asserted as a priority claim under 11 U.S.C. § 507(a)(8).

17. The Liquidating Trustee objects to the Ohio Claim because it is based upon the Ohio Bureau of Workers' Compensation's unconfirmed and unreconciled estimation of the alleged amount due and owing.

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 (a) James Carr of META Advisors LLC, whose business address is 101 Park Avenue, 30th Floor, New York, New York 10178, (b) Dana P. Kane of META Advisors LLC, whose business address is 101 Park Avenue, 30th Floor, New York, New York 10178, 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 Ohio Claim in its entirety; and (2) allowing such other and further relief as is just and equitable.

Dated: September 23, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

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*Counsel for the Gander Mountain
Liquidating Trustee*

VERIFICATION

I, Dana Kane, 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: Sept 23, 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 OHIO BUREAU OF WORKERS' COMPENSATION**

The Liquidating Trustee objects to the claim submitted by the Ohio Bureau of Workers' Compensation, identified by claim number 529-2 (the "Ohio Claim"), and requests that this Court enter an order disallowing and expunging the Ohio Claim in its 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).

The Ohio Claim appears to be an estimation that asserts incremental worker's compensation premiums up to the maximum worker's compensation premium amount for two pre-petition years, where worker's compensation claims were filed and where continuing charges related to such worker's compensation claims might continue for an additional four year period. Unlike in prior years, the Ohio Bureau of Workers' Compensation did not provide an audit to confirm the estimated claim amount; therefore, the actual amount of the estimated premiums has not been confirmed or reconciled and should be disallowed and expunged in its entirety.

Accordingly, the Liquidating Trustee (1) objects to the Ohio Claim as an unconfirmed estimation; and (2) requests entry of an order substantially in the form of the Proposed Order disallowing and expunging the Ohio Claim in its entirety.

CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order (1) disallowing and expunging the Ohio Claim in its entirety; and (2) allowing such other and further relief as is just and equitable.

Dated: September 23, 2019

Respectfully Submitted,

BARNES & THORNBURG LLP

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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 OHIO BUREAU OF WORKERS' COMPENSATION**

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 Ohio Bureau of Workers' Compensation on the basis that it is an unconfirmed estimate that should be disallowed and expunged in its entirety.

IT IS ORDERED:

1. The Motion is granted.
2. The Ohio Bureau of Workers' Compensation claim, identified as claim number 529-2 ("Ohio Claim"), and any amendments to the Ohio Claim, is hereby disallowed and expunged in its entirety.
3. This Order applies to any future claims, or amendments to existing claims, arising out of obligations alleged to be owed to the Ohio Bureau of Workers' Compensation.
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