

**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 CLAIMS OF
ANDREW SQUARE85, LLC**

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

1. The Gander Mountain Liquidating Trust ("Liquidating Trust") and META Advisors LLC, in its capacity as the liquidating trustee ("Liquidating Trustee") of the Liquidating 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 original claim filed by Andrew Square85, LLC ("AS") and reducing and allowing the amended claim filed by AS on the terms set forth herein, and (2) gives notice of a hearing.

2. The Court will hold a hearing on this Motion **at 10:00 a.m. on Wednesday, April 15, 2020**, 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, April 10, 2020, 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 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 Liquidating 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 July 14, 2017, AS filed a proof of claim, identified as claim number 16520-1 ("AS Claim"). The AS Claim asserted \$39,190.26, with \$27,812.44 as an administrative priority under 11 U.S.C. § 507(a)(2) and \$11,377.82 asserted as a general unsecured claim.

13. On September 15, 2017, AS filed an amended proof of claim, identified as claim number 16520-2 (“AS Amended Claim”). The AS Amended Claim asserted a total of \$874,156.25, with \$67,002.70 as an administrative priority under 11 U.S.C. § 507(a)(2) and \$807,153.55 as a general unsecured claim.

14. On May 9, 2018, the Court entered an order disallowing and expunging the administrative portion of the AS Claim on the basis that it had been amended and superseded. [ECF No. 1737.] Thus, the AS Claim only consists of \$11,377.82 asserted as a general unsecured claim.

15. The AS Claim and AS Amended Claim arise in part from post-petition, pre-rejection amounts allegedly due and owing under the lease, pre-petition amounts allegedly due and owing under the lease, and from lease rejection damages that AS alleges remain due and owing by the Debtors.

16. Based upon the Liquidating Trustee’s analysis of the AS Claim, AS Amended Claim, and Debtors’ books and records, the Liquidating Trustee has determined that the total actual amount due is \$642,948.38, with \$4,043.07 in administrative priority amounts and \$638,905.31 as a general unsecured claim.

17. The Liquidating Trustee therefore objects to the AS Claim as it is duplicative of and has been amended and superseded by the AS Amended Claim. The Liquidating Trustee objects to the AS Amended Claim to the extent that AS asserts it is entitled to an amount greater than \$4,043.07 in administrative priority amounts and greater than \$638,905.31 in general unsecured amounts.

18. By this Motion, the Liquidating Trustee: (1) objects to the allowance of the AS Claim in its entirety; (2) objects to the AS Amended Claim to the extent it asserts any

administrative priority amount greater than \$4,043.07 and any general unsecured amount greater than \$638,905.31; and (3) requests entry of an order substantially in the form of the Proposed Order expunging and disallowing the AS Claim in its entirety and reducing and allowing the AS Amended Claim to \$4,043.07 in administrative priority amounts and \$638,905.31 in general unsecured amounts.

GROUND FOR OBJECTION

19. The Liquidating Trustee objects to the AS Claim, identified above in Paragraph 12. The Liquidating Trustee has reviewed the AS Amended Claim and has determined that the AS Claim no longer represents a valid claim against the Debtors' estates. Accordingly, if the AS 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 AS Claim will also result in a more streamlined and accurate claims register.

20. The AS Amended Claim asserts that the Debtors owe AS a total amount of \$874,156.25, with \$807,153.55 in general unsecured claim amounts and with \$4,043.07 in administrative priority amounts.

21. The Liquidating Trustee has reviewed the Debtors' books and records and determined that the actual amount due and owing is \$642,948.38, with \$638,905.31 as a general unsecured claim and with \$4,043.07 as an administrative priority claim.

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

23. 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).

24. 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 AS Claim identified in Paragraph 12 of the Motion; (2) reducing and allowing the AS Amended Claim in the total amount of \$642,948.38, with \$4,043.07 in administrative priority amounts and \$638,905.31 as a general unsecured claim; and (3) allowing such other and further relief as is just and equitable.

Dated: March 12, 2020

Respectfully Submitted,

BARNES & THORNBURG LLP

/e/ Molly N. Sigler

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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 Liquidating 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 Liquidating 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: March 12, 2020

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 CLAIMS OF ANDREW SQUARE85, LLC**

The Liquidating Trustee objects to the claims submitted by AS and requests that this Court enter an order expunging and disallowing the AS Claim and reducing and allowing the AS Amended Claim in the amount of \$638,905.31 as a general unsecured claim, and \$4,043.07 in administrative priority 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).

The Liquidating Trustee objects to the allowance of the AS Claim identified in Paragraph 12 of the Motion because the Liquidating Trustee has reviewed the AS Amended Claim and has determined that it amends and supersedes the AS Claim. If the AS Claim is not formally expunged or disallowed in its entirety, the potential exists for a double recovery for the applicable claimant. The disallowance of the AS Claim will also result in a more streamlined and accurate claims register.

The Liquidating Trustee also objects to the asserted amounts of the AS Amended Claim identified in Paragraph 13 of the Motion, to the extent those amounts do not match Debtors' books and records and/or are not supported by sufficient documentation. The Liquidating Trustee seeks a reduction and allowance of the AS Amended Claim identified in Paragraph 13 of the Motion because the Liquidating Trustee's professionals have compared the Debtors' books and records to the AS Amended Claim, reviewed the claims register, and conducted further analysis, and have determined that the actual amount due and owing on the claims is a total amount of \$642,948.38, with \$638,905.31 as a general unsecured claim and \$4,043.07 as an administrative priority amount.

Accordingly, the Liquidating Trustee: (1) objects to the allowance of the AS Claim in its entirety; (2) objects to the AS Amended Claim to the extent that it asserts any amount greater than \$4,043.07 in administrative priority amounts and any general unsecured amount greater than \$638,905.31; and (3) requests entry of an order substantially in the form of the Proposed Order expunging and disallowing the AS Claim in its entirety and reducing and allowing the AS

Amended Claim in the amount of \$4,043.07 in administrative priority amounts and \$638,905.31 as a general unsecured claim.

CONCLUSION

The Liquidating Trustee respectfully requests that the Court enter an order (1) disallowing and expunging the AS Claim; (2) reducing and allowing the AS Amended Claim in the total amount of \$642,948.38, with \$4,043.07 in administrative priority amounts and \$638,905.31 as a general unsecured claim; and (3) allowing such other and further relief as is just and equitable.

Dated: March 12, 2020

Respectfully Submitted,

BARNES & THORNBURG LLP

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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, Case No. 17-30673
Overton's, Inc. Case No. 17-30673

Debtors. Chapter 11 Cases

**CERTIFICATE OF SERVICE OF THE LIQUIDATING TRUSTEE'S MOTION
OBJECTING TO THE CLAIMS OF ANDREW SQUARE85, LLC**

I, Molly N. Sigler, declare under penalty of perjury that on March 12, 2020, I served copies of the Liquidating Trustee's Motion Objecting to the Claims of Andrew Square85, LLC 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	Andrew Square85, LLC c/o Briggs and Morgan PA Attn: Ben Gurstelle 2200 IDS Center 80 South Eighth Street Minneapolis, MN 55402
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: March 12, 2020

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**UNITED STATES BANKRUPTCY COURT
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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 CLAIMS OF
ANDREW SQUARE85, LLC.**

This matter is before the Court on the Gander Mountain Liquidating Trust ("Liquidating Trust") and META Advisors LLC, in its capacity as the liquidating trustee ("Liquidating Trustee")'s Motion ("Motion") Objecting to the claims of Andrew Square85, LLC, on the basis that one claim should be expunged and disallowed in its entirety and the remaining claim should be reduced and allowed to match the amount currently due and owing under the Debtors' books and records.

IT IS ORDERED:

1. The Motion is granted.
2. Andrew Square85 LLC's claim, identified as claim number 16520-1, is hereby expunged and disallowed in its entirety.
3. Andrew Square85 LLC's claim, identified as claim number 16520-2, is hereby reduced and allowed in the total amount of \$642,948.38, with \$4,043.07 entitled to administrative priority status under 11 U.S.C. § 507(a)(2), and with \$638,905.31 as a general unsecured claim.

4. This Order applies to any future claims, or amendments to existing claims, arising out of obligations alleged to be owed to Andrew Square85, LLC, whether or not identified by a specific claim number or related to a claim number.

6. The Liquidating Trust and the Liquidating Trustee are authorized to take any and all actions that are necessary and appropriate to give effect to this Order.

7. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: _____, 2020.

Judge Michael E. Ridgway
United States Bankruptcy Judge