

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTCO HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11299 (LSS)

(Jointly Administered)

**DEBTORS' MOTION PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE AND SECTION 105(a) OF THE BANKRUPTCY CODE
FOR APPROVAL OF SETTLEMENT BETWEEN ELLETT BROTHERS, LLC AND
THE GANDER MOUNTAIN LIQUIDATING TRUST**

SportCo Holdings, Inc. and certain of its wholly-owned direct and indirect subsidiaries, including Ellett Brothers, LLC (“Ellett”), as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (these “Chapter 11 Cases”), hereby submit this motion (the “Motion”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), approving the settlement agreement, attached to the Proposed Order as **Exhibit 1** (the “Settlement Agreement”), between Ellett and the Gander Mountain Liquidating Trust (as defined below) for the bankruptcy estates of Gander Mountain Company and Overton’s, Inc. (collectively, the “Gander Debtors”). In support of the Motion, the Debtors respectfully state as follows:

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355); and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are Bankruptcy Code section 105(a) and Bankruptcy Rule 9019.
4. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

BACKGROUND

A. General Case Background

5. On June 10, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.
6. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.
7. On June 17, 2019, an Official Committee of Unsecured Creditors (the “Unsecured Creditors’ Committee”) was appointed by the United States Trustee. *See Notice of Appointment of Creditors’ Committee* [Docket No. 58].
8. The factual background regarding the Debtors, including a description of the Debtors’ business, capital structure, and the circumstances leading to these Chapter 11 Cases are set forth in the *Declaration of Bradley P. Johnson In Support of Debtors’ Chapter 11 Petitions and First-Day Motions* [Docket No. 9], which is incorporated herein by reference.

B. Facts Related to Settlement

9. On March 10, 2017, the Gander Debtors filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Minnesota (the “Gander Bankruptcy Court”).

10. On January 26, 2018, the Gander Bankruptcy Court confirmed the Gander Debtors’ and the Official Committee of Unsecured Creditors’ joint plan of liquidation dated October 31, 2017 (the “Gander Plan”), effective February 8, 2018.

11. Pursuant to the Gander Plan, a liquidating trust (the “Gander Mountain Liquidating Trust”) was established and META Advisors LLC was appointed as trustee for the Gander Debtors’ estates. Article VI.E of the Gander Plan authorizes the Gander Mountain Liquidating Trust to settle claims without the Gander Bankruptcy Court’s approval.

12. On March 23, 2017, the Gander Bankruptcy Court entered the *Amended Order Granting Expedited Relief and Establishing Procedures for the Resolution of Reclamation Claims and Administrative Claims Asserted Pursuant to Section 503(b)(9) of the Bankruptcy Code*, which set forth the requirements for asserting a claim under Bankruptcy Code section 546(c) (a “Reclamation Claim”) or section 503(b)(9) (a “503(b)(9) Claim”). The procedure order set May 22, 2017 as the deadline by which creditors must assert Reclamation Claims and 503(b)(9) Claims.

13. Ellett timely filed priority claims (the “Ellett Priority Claims”) against the Gander Debtors in the following amounts:

Reclamation Claim	\$0.00
503(b)(9) Claim	\$1,072,308.55
Total Asserted Priority Claim	\$1,072,308.55

14. On September 20, 2017, the Gander Debtors filed the *Notice of Statement of Reclamation and Twenty Day Claims*, objecting to the Ellett Priority Claims.

15. After arm's length negotiations, the Liquidating Trust and Ellett now have agreed to settle all disputes between them with respect to the Ellett Priority Claims on the terms set forth in the Settlement Agreement.

THE SETTLEMENT AGREEMENT

16. Pursuant to the Settlement Agreement, the Ellett Priority Claims will be allowed in the following amounts (the "Allowed Claims"):

Reclamation Claim	\$6,092.47
503(b)(9) Claim	\$146,708.09
Total Asserted Priority Claim	\$152,800.56

17. In exchange for having its claims allowed, Ellett waives and releases any right to administrative priority with respect to its claims (other than the Allowed Claims) against the Gander Debtors, their chapter 11 estates, and the Liquidating Trustee.

RELIEF REQUESTED

18. By this Motion, the Debtors request that the Court enter the Proposed Order approving the Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BASIS FOR RELIEF REQUESTED

19. Federal Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Pursuant to Bankruptcy Rule 9019(a), the authority to approve a compromise settlement is within the sound discretion of the bankruptcy court. *In re Key3Media Grp., Inc.*, 336 B.R. 87, 92 (Bankr. D. Del.

2005). In exercising this discretion, courts consider whether the compromise and settlement is fair and equitable, reasonable, and in the best interests of the debtor's estate. *See, e.g., In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979); *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997).

20. A settlement should be approved by a court so long as the settlement is above "the lowest point in the range of reasonableness." *In re Washington Mutual Inc.*, 442 B.R. 314, 328 (Bankr. D. Del. 2011); *see also Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Key3Media Group, Inc.*, 336 B.R. 87, 92-93 (Bankr. D. Del. 2005). In deciding whether a particular settlement falls within the range of reasonableness, courts consider the following factors: (a) the probability of success in the litigation; (b) the difficulties in collection; (c) the complexity, expense, inconvenience and delay of the litigation; and (d) the paramount interests of creditors. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996).

21. In this case, the terms of the Settlement Agreement are within the range of reasonableness. The Settlement Agreement provides for the resolution of the Ellett Priority Claims and allows the Debtors to receive a meaningful recovery on the claims without the additional cost and delay necessitated by litigation. Litigating the Ellett Priority Claims would be taxing on the Debtors' limited resources and would take attention away from these Chapter 11 Cases. The Debtors therefore submit that approval of the Settlement Agreement is in the best interests of the Debtors' estates and their creditors.

22. Further, authorizing the Debtors to enter into and effectuate the terms of the Settlement Agreement is well within the equitable powers of this Court. *See* 11 U.S.C. § 105(a)

(“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code.]”); *see also Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

23. The compromise embodied in the Settlement Agreement is the product of extensive, good faith, arm’s-length negotiations between the Debtors and the Gander Mountain Liquidating Trust. In the Debtors’ business judgment, the Settlement Agreement provides a fair and practical resolution the contested Ellett Priority Claims. Absent entry into the Settlement Agreement, there is no guarantee the Debtors would be able to recover any portion of the Ellett Priority Claims, and, even if they were able to do so via litigation, such result would almost assuredly come at substantial delay and expense to the Debtors. Approval of the Settlement Agreement, on the other hand, will ensure that the Debtors are able to receive a meaningful payout in a timely fashion.

24. In this case, the benefits of the Settlement Agreement are well within “the lowest point in the range of reasonableness. The Debtors submit that the Settlement Agreement (a) is fair, equitable, and in the best interests of the Debtors, their estates, and creditors, and other parties in interest in the Chapter 11 Cases, (b) represents an exercise of the Debtors’ sound business judgment, and (c) should be approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

NOTICE

25. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Gander Mountain Liquidating Trust; (c) counsel to the Prepetition Term Loan Agent; (d) counsel to the Official Committee of Unsecured Creditors; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

26. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as the Court deems appropriate.

Dated: September 10, 2019
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

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