

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

BRIEF OF EXERPTS FROM TRANSCRIPTS

Date: 23 October 2023

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Christopher Stanek (LSO# 45127K)

Tel: 416-862-4369

Fax: 416-862-7661

E. Patrick Shea, KC (LSO# 39655K)

Tel: 416-369-7399

Fax: 416-862-7661

Lawyers for Buffalo and Fort Erie Public Bridge
Authority

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and –

PEACE BRIDGE DUTY FREE INC.

Respondent

INDEX

TAB	TRANSCRIPT
1.	Excerpt from the transcript of Jim Pearce, 31 August 2023
2.	Excerpt from the transcript of Ben Mills, 17 August 2023
3.	Excerpt from the transcript of Ron Reinas, 23 August 2023
4.	Excerpt from the transcript of Karen Costa, 30 May 2023
5.	Excerpt from the transcript of Tim Clutterbuck, 30 May 2023
6.	Excerpt from the transcript of Lisa Hutcheson, 29 September 2023
7.	Excerpt from the transcript of Ephraim Stulberg, 29 September 2023

Transcript Excerpts

Jim Pearce—31 Aug 2023

...

44. Q. So just to clarify, so there are four holding companies controlled by each of the directors and those are the shareholders?

A. Right, and some have, like, two family members within the holding company.

45. Q. But the holding company owns the shares is what you're...

A. Correct, yes.

...

154. Q. Did Peace Bridge Duty Free engage the services of any other consultants or advisors in connection with the negotiation of the lease?

A. The negotiation, no.

155. Q. So who is Mr. John Menchella?

A. Oh, we...he is a consultant, and he helped us with the RFP, assisted us in putting the RFP together.

156. Q. Okay, so he assisted you with the RFP. Was he also involved in the lease?

A. I believe he...yes, I believe he would have reviewed that with us also.

...

176. Q. Okay. You will agree with me that the only fully signed amendment to the lease is the first rent deferral agreement dated 27 April, 2020, correct?

A. Correct.

...

192. Q. So you will agree with me that, based on these financials, in 2012 1.9...sorry, in 2012 dividends of about four million were paid out to the shareholders?

A. 2012?

...

194. Q. 2012, 1.9.

A. Yes.

195. Q. And then you pay the capital dividend?

- A. Right.
196. Q. Of 2.2...
- A. Right.
197. Q. ...which was roughly four million, correct?
- A. Right.
198. Q. Okay, 2013 is right beside.
- A. That...okay, yes.
199. Q. 2013 the dividend was 3.6 million, 3.64 million actually.
- A. Correct.
200. Q. And then if you move further on, you'll have the 2014 financials. I'm sorry, I didn't add numbers to these pages because they weren't already numbered. So I did not want to alter the exhibit. 2014, you go on in roughly the same spot.
- A. Okay.
201. Q. You'll agree they took 2.4 million in dividends?
- A. Correct.
202. Q. And do you agree in 2015 they took another 2.4 million?
- A. Correct.
203. Q. And then in the first three months of 2016 they took 600,000?
- A. Correct.
204. Q. Okay, and to your recollection in the years prior to this, were dividends of a similar quantum?
- A. I do not recollect the magnitude.
205. Q. Do you recollect dividends being taken out annually?
- A. Yes.
- ..
211. Q. And the RFP that was put out contemplated minimum rent.
- A. The RFP included...
212. Q. Yes, and I believe that minimum rent was 2.5 million?

A. I believe so.

213. Q. And you will agree with me that Peace Bridge Duty Free knew that it had to submit a proposal into that process that involved minimum rent?

A. That was a requirement, yes.

214. Q. So you couldn't play unless you offered minimum rent?

A. I believe that was a requirement.

...

241. Q. So this is the actual proposal attached to the lease and there is no provision here which contemplates a mandatory abatement or reduction in the minimum rent. You'll agree with me on that?

A. But that's not the lease.

242. Q. Sorry, this is your proposal.

A. Right.

243. Q. So you weren't proposing that there be any requirement to reduce the minimum rent?

MR. JONES: In this page?

BY MR. SHEA:

244. Q. In your proposal. Is there anything in your proposal, response to the proposal, that contemplates minimum rent being reduced under any circumstance?

A. This was not the...this was our proposal, not the lease.

245. Q. No.

A. So the lease had to be...

246. Q. And you knew the lease...you have already said the lease contains no mandatory minimum, no reduction in mandatory minimum, correct?

A. Right.

248. Q. Okay. Sir, are you aware of any provision in the lease that contemplates that rent will be...that the Authority is required to reduce the rent under any circumstances?

A. The 18...

249. Q. So that's what you rely on, 18.07?

A. Is that the one?

...

260. Q. So why choose four as the minimum instead of 2.5?

A. It was based on the sales projections and based on percentage rent we were going to offer as part of the criteria. That was what really drove this, was the 20 percent. We felt 20 percent was going to be better than...hopefully better than what other people are submitting, and that was the key for us.

261. Q. So your assertion is that you offered 1.5 million more in base rent for no particular reason?

A. No, we offered 20 percent, and we have consistently achieved sales of 20 million dollars and more in our history.

...

272. Q. I'm asking him to...so is there any place in this document where you...not you personally...where Peace Bridge Duty Free links the four million dollars to 20 percent sales?

A. Well, we have always achieved...

273. Q. I'm asking in the document.

A. Right. Well, the calculation is there.

274. Q. The calculation of what?

A. Twenty percent of 20 million, 22 percent of the 25 million and the 24 percent over 25 million would be the...what the bridge authority would read from our efforts.

...

314. Q. And you'll turn the page. Mr. Menchella suggests specific language, the language he was suggesting that you request be added to the lease?

A. Correct.

315. Q. Was that language ever put to the Authority?

A. I believe so.

316. Q. Okay. So this language was put to the Authority and they expressly rejected it, correct?

A. No, was it...I'm trying to think whether it was sent to them or part...no, I don't believe...

...

318. Q. So was that language ever put to the...

MR. JONES: Sorry, Counsel, you can't tell him not to refer to other documents.

319. MR. SHEA: What I'm telling him is I'm asking about this document. I'm asking him was this language put to the Authority.

THE DEPONENT: Was this particular document sent to the Authority?

BY MR. SHEA:

320. Q. No, that language.

A. I don't recall what the particular language that was put to the Authority.

...

324. Q. Sorry, sorry, let's step back. Was this language ever put to the Authority, yes or no?

A. I do not recollect that that particular letter was put to the Authority.

...

342. Q. Okay, can you identify for me in any document where the Authority agrees to a mandatory abatement of rent based on anything, a reduction in your business, a closure of the bridge, anything? Can you point me to a written document where the Authority agrees to a mandatory abatement of rent?

A. The authority agreed to we would have...

343. Q. That's not my question. Can you point me to a written document?

A. I cannot point you to a document you're looking for.

...

395. Q. You haven't produced any documents where you say to the Authority, "We confirm 18.07 includes a mandatory abatement"?

A. I have nothing from the Authority after our discussions...I can't recall anything that says 18.07 in writing would address these situations. I don't..

...

407. Q. Okay, but you'll agree with me that the language below that contemplates discussions relates to catastrophic events, correct?

A. Yes.

408. Q. Okay.

A. Beyond our control.

409. Q. And that impacts sales?

A. Traffic, yes, the traffic volume, which would impact sales.

410. Q. And that contemplates discussions, not a mandatory amendment or mandatory abatement?

A. Well, again, 18.07 was...what they said was the...

411. Q. I didn't ask you that, sir. I asked you...your ask was that catastrophic events beyond your control, like vehicle traffic volumes, et cetera, would lead to discussions, correct?

A. Acting in good faith to the impact upon the lease.

...

419. Q. But the Authority agreed to engage in consultation, correct?

A. Correct.

420. Q. They never agreed to a mandatory abatement?

A. It's not in the lease.

...

438. Q. And you'll agree that 18.07 contemplates consultation and not a mandatory abatement?

A. 18.07 reads consultation and 18.07 reads...

MR. JONES: Counsel, do you want to take him to the language of 18.07 again?

439. MR. SHEA: He was looking through it, so I thought he was going to it.

THE DEPONENT: Yes, I found it here.

MR. JONES: Nobody is disputing the language in 18.07.

...

440. Q. And that addressed all your concerns, the concept of consultation?

A. The concept, yes, and discussing the impact on the lease and in good faith coming to something, a resolution.

441. Q. But you agreed to 18.07 which says "consultation"?

A. I agree that the wording is what the wording is.

...

445. Q. Under any circumstance. Is there any provision that you are pointing to in your...any written document?

A. It was verbal, the discussion we had with the Authority.

...

504. Q. Okay, and you also agree with me that when you submitted the response to the RFP in 2016, you recognized that traffic over the bridge had been declining, correct?

MR. JONES: Is there a document that you want to put him?

BY MR. SHEA:

505. Q. I'll put a document to him. So in your...in tab 1, which is your...the lease, your RFP response, on the top it is page 109, identified at the top.

A. Yes.

506. Q. One of the areas that you identify as a concern is vehicle traffic issues, including a steady decline in volumes.

A. Correct.

507. Q. So you will agree that there had been a 38 percent decline in traffic since 2000?

A. I don't have that number.

508. Q. It's in your document.

A. Okay.

...

509. Q. And your own sales had declined 12 percent. Sales declined 12 percent related to passenger vehicle traffic...passenger vehicles, correct?

A. I don't have that number.

510. Q. That's also right there.

A. Okay.

...

513. Q. So you agree that your own sales declined 12 percent relating to passenger vehicles?

A. I would believe that would be correct.

...

560. Q. So Peace Bridge Duty Free didn't discuss closing the store with the Authority, did it?

A. No.

...

565. Q. So maybe that's the answer, the answer to did you ever tell them you were going to close the store, or did you just close it and tell them afterwards?

A. We closed the store.

566. Q. And told them afterwards, okay.

MR. JONES: So you're fine with it, it was after the store was closed?

...

568. Q. So you never told them in advance you were closing the store. You just closed it, and they found out about it. So you will agree that by April 3rd, Peace Bridge had not paid rent for April, 2020?

A. Correct.

...

639. Q. But you'll recall that the document that was sent by the Authority to Peace Bridge...

A. Right.

640. Q. ...was a rent abatement agreement?

A. Yes.

641. Q. And it contemplated that the Authority would...sorry, rent deferral agreement, not abatement agreement, rent deferral agreement, would defer rent for a period of time?

A. Right.

642. Q. And then the rent that had been deferred would be repaid by Peace Bridge over a period?

A. There was...yes, I believe that was the concept or what is in the rent deferral agreement.

643. Q. Yes, and in this e-mail you will agree that Mr. O'Hara indicates that Peace Bridge Duty Free is in agreement with virtually all of the terms in the proposal, except for the repayment terms or the payment terms? What he proposes is 20 percent...percentage rent and deferral or payment of the deferred rent over two years. He never asked for an abatement at this point in time?

A. I'm just reading it like you.

644. Q. Do you recall asking for an abatement at this point in time?

A. I do not recall.

...

646. Q. So you will agree that Mr. Rienas explains that a...the accrual of unpaid rent for up to a year and then convert that to a two-year loan is not acceptable to the Authority and explains why? It says that:

"...It will likely result in violating the bond covenants and the Authority is not a bank..."

A. I can't dispute what Ron said here.

...

661. Q. Okay. Do you want to go back to...sorry, 24.

A. Right.

662. Q. This is Mr. Rienas' e-mail to Mr. O'Hara...

A. Right.

663. Q. ...indicating that the board had considered and rejected Peace Bridge's proposals for changes to the first rent deferral and explaining why, and I'm asking are you aware of any response from Mr. O'Hara to that e-mail?

A. No.

664. Q. And you did not respond to that e-mail?

A. And I did not.

...

680. Q. Yes. You signed back or Peace Bridge Duty Free signed back the first rent deferral, correct?

A. That would be on May 6th, yes. It was actually on May 6th that it got sent back.

681. Q. May 6th it gets sent back, and turning over to the next page, anticipating, so the next page, and after getting it back...

A. The 27th, the 27th?

682. Q. May 6th, 27, yes. After getting it back, Mr. Rienas agrees that there will need to be more discussions. Do you recall that, that there was...you referred in one of your affidavits that there was an agreement. After getting the first rent deferral back, there was an agreement that there would be more discussions?

A. Yes. Yes, I remember this e-mail.

...

702. Q. So under the terms of this agreement, Peace Bridge Duty Free was required to begin to repay the deferred rent on July...beginning August 1st, 2020, correct?

A. I believe that's correct.

703. Q. And you'll agree with me that Peace Bridge Duty Free has never repaid any of the deferred rent?

A. That's correct.

...

719. Q. But you recognized that absent an agreement, the rent deferral period ended on July 31st, 2020, and rent would be payable on August 1st?

A. From a legal standpoint, possibly, right.

720. Q. I'm asking from a business perspective what did you understand.

A. A business perspective, we would be back in discussions and doing something with that.

721. Q. Okay. So but Peace Bridge Duty Free didn't reach out proactively to the Authority prior to July 1st, 2020 about the future, did it?

A. I do not know about that, unless we review the documents.

722. Q. Well, did you reach out to...

A. I did not.

723. Q. Do you recall Mr. O'Hara reaching out?

A. In July of 2020, I do not recall.

724. Q. Okay. So turn the page. Look up 29. Do you recall this e-mail?

A. Yes.

725. Q. So it was the Authority that reached out to Peace Bridge after the rent deferral had expired. There had been no discussions, reach out that you're aware of. So August 6th they reach out and say the rent deferral period expired, and the restart date was August 1. Turn the page, you'll see the response.

A. From the 30?

726. Q. Yes. Well, no, I think it was 18. Yes, number 30.

A. Yes.

...

732. Q. So during that interim period, Peace Bridge Duty Free didn't reach out at all to the Authority, did it? So from...

A. Is that a question or...

733. Q. Yes, I mean, I can't find in your disclosures any communications or engagement to...

A. Either side, from the Authority to us?

734. Q. Yes. But you will agree with me that shortly after...so this is in August. There have been no...there is no outreach from either side. So you're not reaching out, saying, "We need to do something about this. We need to get..."

A. I guess that's your conclusion.

735. Q. Well, I don't know. I'm asking is there...that's what I'm asking. Are there documents that are not in your disclosure during this time period?

A. Not that I know of.

736. Q. No, and there were no internal discussions at Peace Bridge Duty Free during this time period. You and Mr. O'Hara were not exchanging communications during this time period?

A. I don't recall.

...

741. Q. So on October 29th you have got the...Mr. Rienas reaches out.

A. Right.

742. Q. And says, "Here is the draft agreement."

A. Okay.

...

745. Q. And he indicates there has been no response to the questions raised by the Authority. Are you aware of a response during that period?

A. No.

746. Q. No. So there has been no response for two weeks to the draft second rent deferral and there are further questions or the same questions repeated.

This e-mail does not appear to be in your disclosures. Do you know why that may be? You just couldn't find it?

A. I do not know why it...

...

778. Q. So at point 4 you indicate that as at November 30th you had drawn down 115,000 of a 900,000 line of credit. That line of credit is with RBC?

A. All our credit is with RBC.

...

812. Q. Okay. So I want to address, first of all, with you the assertion that you did not have a million on hand to make the million dollar payment. Is it not correct that you had 889,000 available on your line of credit with RBC?

A. That, I'm not sure. I'm honestly not sure. We would have to check with...I know we had that line of credit. I wasn't sure about the...we had access to that or not.

813. Q. I refer you back to your response...

A. Yes.

814. Q. ...to Mr. Pearce (sic) at tab 40.

A. Right.

815. Q. Where you indicate that you have an operating facility, and as of November 30th the balance drawn on the facility was 115, with a limit of 900.

A. Right.

816. Q. So certainly you will agree with me that Mr. Rienas would not be incorrect in assuming that you had this money available?

A. I can't make that determination with Ron.

817. Q. Okay, but you told...in response to a question you say...

A. The question is what...I believe he had the credit facility and questioned what the credit facilities were and I explained the different ones.

818. Q. Okay.

A. There are three different ones. I explained those to him, so...

819. Q. And then in your 2020, which is Exhibit 4...

A. Okay.

820. Q. In your 2020...but this is at December 31st, 2020...do you have those handy?

A. I have seen them around here somewhere.

821. Q. I will give you another copy if you would like. I have other copies here.

A. It's in here somewhere.

822. Q. It's okay. Here is another copy.

A. Okay.

823. Q. So in the 2020 financials, if you turn to...these are your audited financials as at December 31.
- A. Right.
824. Q. If you turn to the asset listing, so the balance sheet?
- A. Yes.
825. Q. So you have got...you list as your assets 734,000 in receivables, and note 6...I think if you'll turn to note 6, it refers to an excise tax credit of 427,000 as being included in that, sales and excise tax, 420,000.
- A. Right.
826. Q. So you had that coming.
- A. These were...note that these probably were completed on December 31st before the end of March, 2021.
827. Q. Those were on your balance sheet?
- A. Yes.
828. Q. And then you had a tax refund of 1.2 million coming.
- A. So on April 21st, that's when we got that.
829. Q. Yes. So you have 1.2 million that you got April 21st.
- A. We didn't get it, but that's when the statements came out.
830. Q. So as at December the 30th...
- A. Right.
831. Q. ...you got a line of credit that has 889,000 available?
- A. I can't confirm that, but anyways.
832. Q. Okay.
- A. That's your assumption. I can't confirm that.
833. Q. You advised the Authority that...
- A. I explained our letters of credit to Ron.
834. Q. Not letters of...that was your credit line.

A. Credit line, yes, but they're all in our credit facility. I explained that, what the three different parts were, but again, it would be up to the Royal Bank whether that money was actually available or not.

835. Q. And you had 427,000 coming in HST, I assume HST?

A. Correct.

836. Q. HST input tax credits, and 1.2 million in tax...

A. Correct.

837. Q. ...refunds?

A. Correct.

838. Q. And you will also agree with me that based on this in...

A. But note on that HST receivable, we probably owed a lot of that to the bridge authority. That flows through to them. I'm not sure of the exact breakout of that at December 31st.

839. Q. HST, why would you owe HST to us?

MR. JONES: That was paid...that was part of what Ron Rienas was asking for.

THE DEPONENT: One of the demands that he...

BY MR. SHEA:

840. Q. No, that's the input tax...the HST there is input tax credit, right. So you had already...

A. No, we might have accrued some of that, knowing we owed that to the Authority.

841. Q. So where is the...

A. So of that...

842. Q. Sorry, note 6...okay, let's...can you undertake to determine whether the sales and excise tax...

A. Right.

843. Q. ...receivable owing back to you...

A. That 400,000 was all to us or some to the Authority?

844. Q. Yes.

...

905. Q. So you will agree with me that in this letter Mr. Rienas makes it clear that it's the position of the Authority that percentage only rent is not acceptable?

A. Where does he say that?

906. Q. "...In response to your letter of January 15..."

A. Okay.

907. Q. "...Peace Bridge Duty Free's proposed financial business plan of eliminating base rent and moving to only percentage rent is unacceptable..." Do you see that?

A. That's Ron's letter, yes.

908. Q. And you'll appreciate that further down, Mr. Rienas, on behalf of the Authority, indicates:

"...Your rent proposal was the key element in Peace Bridge Duty Free winning the concession, and was included unamended in the lease between Peace Bridge Duty Free and the Authority, and the Authority is not prepared to alter the basis upon which the concession was awarded..." Do you see that? That's the position.

A. Okay.

909. Q. Okay, so you're aware that that was the position being taken?

A. I acknowledge that's his letter.

910. Q. Okay. January 19th, this letter, he also makes an inquiry and indicates that the plan is silent on accessing government relief programs like the BCAP and the HASCAP. You indicated that you were going to give me some information on the BCAP, but what about the HASCAP? Did the bridge...did the Peace Bridge ever apply...sorry, did Peace Bridge Duty Free apply for that?

A. Yes, we did.

911. Q. And what was the result?

A. Again, a million dollar loan.

912. Q. Okay, and when did you receive that million dollar loan?

A. I have to get back to you with the exact date.

913. Q. Okay. So I'm going to ask you to give me an undertaking as to when you got the million dollar loan and how those funds were spent.

A. Yes.

914. Q. So the undertaking is when the HASCAP million dollars was received and how it was spent. Okay.

MR. JONES: I'm going to take that one under advisement. U/A

...

916. Q. So you were aware on...or Peace Bridge Duty Free was aware on January 19th that the Authority was not going to agree to a move to percentage only rent. They found that to be unacceptable?

A. On January 19th, right.

917. Q. January 19th, and did that ever change? Did they ever take a different position on whether they were prepared to accept percentage only rent?

A. We had always hoped through discussions that would be the...part of the plan to go forward.

918. Q. The next document is March 25th. So take it that between January 19th, when the plan for percentage only rent was rejected, and March 25th, there were no new proposals from Peace Bridge Duty Free?

A. If they're not in your file...

919. Q. If they're not in the documents, they don't exist. They're not in the documents. So they don't exist. So the next proposal is March 25th. Do you recall that proposal?

A. Yes.

920. Q. And why don't you read this document?

A. Sure. Okay.

921. Q. So you'll agree with me that this proposal doesn't differ significantly from your January 19th proposal?

A. Okay.

922. Q. The documents are the same, aren't they, the attachments?

A. Are they?

923. Q. It refers to, "As previously indicated." Sorry, I don't want to interrupt you, but isn't the gist of this letter, the third paragraph, where you ask for a meeting? Isn't that the purpose of this letter, to ask for a meeting?

A. Yes.

...

940. Q. So you were asking them to agree to accept percentage rent only going forward?

A. Yes, to the...yes.

...

964. Q. I'm asking when he...well, let me ask this. So the financials are dated April 21st, 2021.

A. Correct.

965. Q. So you could not have provided them before April 21st, 2021?

A. They were not...yes, we couldn't have provided them by end of March.

966. Q. Yes. So but you also could not have provided them to the Authority before you received them, and you got...they're dated April 21st, 2021. So you could not have given them to the Authority before that?

A. I don't want to agree with that, because I'm not exactly sure when I sent them to the Authority, but...

967. Q. Would you have sent them to the Authority before they were given to you?

A. Well, no, no, you're referring to the date, and I'm not sure if this date is the...

968. Q. Okay.

A. ...the date that is...

969. Q. Can you give me an undertaking as to when you gave the 2020 financials to the Authority?

A. M'hm.

...

THE DEPONENT: Well, I don't know the exact date. That's all. I want to be accurate.

MR. JONES: I think what he asked you is it's...you didn't give it to them before the financials are dated. We can agree on...

973. MR. SHEA: Okay, that's what I asked.

MR. JONES: You don't...

THE DEPONENT: Yes.

MR. JONES: I assume you don't...there is no issue about that?

THE DEPONENT: Yes.

...

981. Q. So you responded based on this letter? There was a request to you of April 28th. So within days of receiving the financials, and you responded on May 6th. Sound about right?

A. I responded on May 6th to this April 28th, yes.

982. Q. Yes.

A. Yes.

983. Q. Okay. So May 6th you responded. Is it not correct that the Authority arranged an in-person meeting with you for the 13th?

A. Me and Greg?

984. Q. I don't know. I think so. Let's turn up a document.

A. Yes.

985. Q. Let's turn up document 51.

A. Okay. Oh, yes, okay, yes.

986. Q. Yes, so the 13th.

A. Yes.

...

996. Q. And there was no communications concerning a proposal from May 26th until August 21st, was there?

A. I can't say that is factual.

997. Q. But if it is not in your disclosures, it didn't happen?

A. Okay.

998. Q. I'm just asking.

A. I don't know, yes.

999. Q. So do you recall anything being sent to the Authority between the 26th of May and August 21st?

A. I do not recall.

1000. Q. But on August 21st, if you turn the tab over to 53, on August 21st you delivered this proposal, did you not?

A. Correct. Is there a date in there? I believe...we did submit this. I believe that was the same time frame.

1001. Q. Did you want to check whether it was August 21st or do you agree it was August 21st?

A. I'll go with August 21st.

1002. Q. Okay. So this is the proposal that you had promised in June?

A. Okay.

1003. Q. Or that we had requested in June, and it's in August. So this proposal...I'm going to take you to page...it's 290 at the top. It's page 5, bottom right, page 5 of the proposal. Okay?

A. Yes.

1004. Q. This is your proposal?

A. Yes.

1005. Q. You're only going to pay 20 percent of revenue received?

A. Yes.

1006. Q. You'll agree that that has been rejected twice now by...at this point in time, it had been rejected...that concept had been rejected twice by the Authority. You'll agree with that, that they already told you twice?

A. At certain times, they disagreed with that. We had hoped...

1007. Q. You hoped they would change their mind?

A. Based on our proposal, our plan.

1008. Q. You also indicated that you were looking for 100 percent waiver of all of the rent that had accrued and move to a percentage rent only basis going forward. So you're looking for an amendment to the lease to remove minimum rent and you're looking for a waiver of 100 percent of the accrued deferral, and that would have been the deferral under the first and what you assert is the second rent deferral agreements, correct?

A. Yes, all base rent that has been accrued be waived by the bridge authority.

1009. Q. So 100 percent forgiveness of rent...

A. Yes.

1010. Q. ...and amendment of the lease to remove minimum rent in perpetuity, for the rest of the term, yes?

A. That's the way it reads.

1011. Q. Okay. So why would you make a proposal that you knew was unacceptable to the Authority?

A. We didn't know that.

1012. Q. Well, they had previously told you that percentage rent was not acceptable to them.

A. You said two different times, two different dates. They said no. We think this plan showed...hopefully convinced them the best way for them and us going forward would be this proposal.

1013. Q. But they didn't agree?

A. Ultimately, I do not believe they did.

...

1053. Q. I'm not going to ask you for a legal...did they ever change the locks?

A. I don't believe there is any locks.

1054. Q. Okay.

A. Yes.

1055. Q. There are no locks on the front doors of the duty free?
- A. I don't believe so. We never close. Yes, there is a door lock.
1056. Q. So they never changed those locks. They never...
- A. No.
1057. Q. Did they take possession of the leased premises?
- A. That's the question, no.
1058. Q. No. In this document do you see anywhere the words, "The lease is terminated"?
- A. That's what I'm looking for "terminated"?
1059. Q. Yes. It may be easier. Are these notices not titled "Notice of default"?
- A. Notice of default.
1060. Q. Did you receive notice of termination?
- A. Is that a separate legal document?
1061. Q. Did you receive a document marked "Notice of termination"?
- A. I think...no.

..

1086. Q. Have the shareholders made any shareholder loans to this company?
- A. No, I do not believe that any loans...
1087. Q. Have the shareholders made any equity contributions to the company in...
- A. No.
1088. Q. No.
- A. Oh, in what time period?
1089. Q. Since 2016.
- A. No.

...

1281. Q. But the November deferral agreement was never signed. You will agree that you never even started to make the payments under either deferral agreement. You have never made any payments under either deferral agreement, have you?

A. Correct.

...

1295. Q. But I'm not asking if anybody. Have you asked the shareholders to contribute money to this enterprise?

A. Me, personally, no.

1296. Q. Has Mr. O'Hara asked the shareholders to contribute money?

A. I don't know.

1297. Q. Sorry?

A. I don't know.

1298. Q. Will you inquire as to whether Mr. O'Hara has asked the shareholders to contribute money to this enterprise?

MR. JONES: No. /R

...

1330. Q. My ask is have you run projections to determine how much capital this company needs based on these disputes? So you say your proposal is two million dollars of rent arrears. We say 50 percent. Have you run projections to determine how much capital you would need to meet our demand or to accept our proposal?

A. This is your...what, our proposal of October something? Which one?

1331. Q. You asked...you suggested two million...

A. Right.

1332. Q. ...payable over infinity.

A. Right.

1333. Q. We suggested 50 percent payable on a fixed period of time. Did you run proposals?

A. We don't know what that 50 percent is, right, because it...

...

1340. Q. What I am asking is did you do any analysis to determine what it would take to accept our proposal?

A. I believe not.

1341. Q. Okay. So you did not do any analysis to determine what would it take to accept our proposal?

A. Your October proposal?

1342. Q. Yes.

...

1357. Q. So you indicated that you hadn't asked the Authority how they calculated what they thought was owing. How did you...

A. No, I wasn't sure.

1358. Q. You weren't sure how. Have you ever asked them?

A. I'm not sure.

1359. Q. You're not sure if you asked them?

A. Yes.

...

1370. Q. What percentage of the rent do you claim two million dollars equates to?

A. At that time are you asking? Like...

1371. Q. Sorry, yes, so as at the time the offer was made to pay two million dollars in rent...so I believe it's October of 2021, what do you assert the two...what percentage of the rent do you assert the two million dollars equates to?

A. I don't know.

1372. Q. So it has no basis to the rent owing. It's just a lump sum?

MR. JONES: It's a...sorry, I don't want...it's a number.

THE DEPONENT: Yes, so I don't know.

BY MR. SHEA:

1373. Q. So it's not based on any percentage of...

A. I would have to go through and reconcile.

1374. Q. So you did not calculate that number based on any percentage of rent. It's just a lump sum?

MR. JONES: It's a gross number.

THE DEPONENT: Yes.

BY MR. SHEA:

1375. Q. And is there any basis for the gross number or is it just...is that the most you can raise? How did you determine two million?

A. I don't have that answer.

1376. Q. So you don't recall...

A. Yes.

1377. Q. ...how you came to two million dollars?

A. Yes.

1378. Q. So it's not...sorry, let me ask you this. Is it based on the financial projections, some account on the financial projections? Is it based on anything you can recall?

A. In 2021, I can't recall.

...

...

20. Q. Now, I think the specific focus of your affidavit was clause 18.07 of the lease.

A. Correct, yes.

21. Q. That's the specific issue you provide your evidence on?

A. That's the specific issue that I was advised that I could provide relevant evidence. I'm not involved in this proceeding. So I just don't know what is at issue, other than there is an issue between the two parties.

...

26. Q. That, Exhibit C, the draft lease, was a lease that Peace Bridge Duty Free was prepared to enter into?

A. Yes, like, they...definitely. I think they sought and moved forward with other provisions and had concerns, but yes, I think Peace Bridge's approach always was to put in a bid, and then also to see if there is any additional concessions that can happen subsequent to them being identified as the top proponent. I think that was their bidding strategy.

...

97. Q. In Exhibit 1, what appears there is the same thing that appears in what Mr. Pearce sent to you on the 13th of July, correct?

A. That 18.07, yes, I confirm that.

98. Q. And 18.07 in that form, completely unchanged, is the same thing that gets into the final lease?

A. Yes, I confirm to you...like, I can take your word for it, but I'll confirm it.

99. Q. Don't take my word for it. Please confirm it.

A. I'll confirm it. Yes, yes, that's correct. Just to confirm, I was looking at Exhibit D of my affidavit as being the lease as entered into by the parties.

...

101. Q. And you agree that it makes no reference to a rent abatement or a reduction in rent?

A. It does not expressly state that, no.

102. Q. And in your affidavit you talk about catastrophic events. You agree that it makes no reference to any catastrophic events, correct?

A. Yes, it does not say "catastrophic events", those words, no.

103. Q. It makes no reference to any force majeure?

A. It does not include the word "force majeure".

...

104. Q. And there is no evidence that you provided any comments on this clause to Mr. Darling after it first appeared to you?

A. Yes, I don't...my conversation with Mr. Darling, I think, was to...as I think back, was not to so much debate that, but to basically try and...well, there was a couple of other miscellaneous issues that have nothing to do with the parties' dispute at this point, but also I believe I pressed Mr. Darling with respect to trying to get...basically reiterating some of the arguments that Jim and perhaps Greg had made to the Bridge Authority previously, but he wasn't receptive to that.

105. Q. Whatever the content of those discussions, nobody changed 18.07, right?

A. Correct. It remained from July 13th, as far as I know, 2016, if that's the right date, to the...to inclusion of the final lease.

Also, I think the lease was finalized, I think...yes, sign off on the lease...I don't know what it is dated, but looking...thinking about it, it needed to be sort of done by the 25th in terms of the negotiations so it could go to the board on maybe the 28th of July. That's 2016.

106. Q. 2016. Now, your affidavit also references a meeting July 18th between Jim Pearce and Karen Costa.

A. Correct.

107. Q. You weren't at that meeting?

A. No, no, I wasn't.

108. Q. Your entire affidavit representations about that meeting come entirely from Mr. Pearce?

A. Not...I wouldn't say entirely, because I do have the notes from the meeting, and I believe I have included in my affidavit the e-mail that was forwarded to me from Ms. Costa. So my information would be my conversations with Jim in the normal course of providing guidance in that time period, and then secondarily, the documents that are attached to my affidavit. That's the source of my information.

109. Q. You have never spoken to Ms. Costa?

A. I have not, no, at least not that I recall anyway.

110. Q. Not about the July 18th meeting or anything else?

A. No, that's correct. Like, no, I did not speak to her specifically about the lease. Have I ever talked to her? I have no recollection.

111. Q. But you do interpret her July 19th e-mail for the court?

A. The July 19th e-mail for the court, well, it says what it says, but...

112. Q. Okay, it says what it says.

A. I think I quoted from it.

113. Q. But you have never spoken with Ms. Costa to get her view of what it is that she wrote?

A. No, I did not. No, I did not speak with her to get her information on what she intended or not intended.

114. Q. And now so just to sort of summarize all of this, the 18.07 appears in the drafts of the lease prior to the July 18th meeting?

A. Right.

115. Q. Mr. Pearce delivers this handout that's at Exhibit E to your affidavit at the July 18th meeting, right? That's what he told you?

A. Yes. Yes, yes, that's right. No, I'm just thinking about...yes. Yes. Now, I don't know if that was...you know, just to be clear, I don't know...you know, and I don't speak to this in my affidavit, but just to be clear, I think discussions preceded the July 13th affidavit and preceded this...

116. Q. July 13th affidavit, sir? I don't...

A. Sorry, sorry, excuse me, my apologies. I think discussions between Peace Bridge Duty Free and the Bridge Authority with respect to their finalization of negotiations, various concerns with the lease, preceded Mr. Pearce's July 18th, 2016 meeting.

So what those were, you know, I haven't turned my mind to it, but it's not as if that was the only discussion on July 18th, 2016. I presume that there were discussions that happened before because the lease is being changed effective July 13th, 2016.

117. Q. For the purposes of this proceeding...

A. Yes.

118. Q. ...clause 18.07 appears before the meeting?

A. Correct, it does, yes.

119. Q. The meeting...

A. Before the July 18th meeting, correct.

120. Q. The meeting between Ms. Costa and Mr. Pearce occurs on July the 18th?

A. That meeting occurs on July 18th. Was there other meetings? You would have to ask Mr. Pearce.

121. Q. You weren't there. The only thing...

A. I wasn't, no.

...

123. Q. So it's the same clause that you got on July the 13th?

A. That's right. I don't know if other aspects of the lease were changed. I can't speak to that. I just haven't informed myself on that, but...

124. Q. Despite...

A. ...18.07 had not changed from the 13th to the finalization of the lease, that is correct.

125. Q. Despite what any of the discussions were on July the 18th, that clause didn't change, right?

A. It did not change, no. It says what it says. It had not changed.

...

...

23. Q. Right. So those — when you say “advice of the Board,” you’re talking about the directions given by way of resolutions?

A. Correct. But there’s always some nuance to some of that.

24. Q. What do you mean by nuance?

A. Well there may be circumstances where the Board may approve -- approve something and say, “Well, make sure that this gets done,” that type of thing.

25. Q. And that’s something other than what’s in its resolution?

A. Correct. Yeah. I mean, you have to understand, every general manager interprets the direction of the Board. So there’s the actual motion that a Board approves, and then there could be other circumstances that effect timing or how that’s actually accomplished.

26. Q. Okay. So are you saying to me that the Board’s directions are not necessarily what are contained in its resolutions?

A. No. No I’m not saying that.

27. Q. So what the Board’s directions are contained in their resolutions?

A. Yes, the Board’s directions are, but how those are carried out, there’s oftentimes nuance and then circumstances may change as a result of things that happen after a Board adopts a resolution. There could be further discussion, there could be circumstances that impact the actual implementation of a Board direction.

...

57. Q. Okay. In any event, getting back to this agreement, this first deferral agreement. So is it the Authority’s position that Peace Bridge Duty Free was required to begin paying rent as of the restart date?

A. That’s what it — yeah, that’s what it says. If I recall correctly, there were discussions, telephone discussions throughout the period in August, September, given where the government was going with that. So we did not make that an issue with Peace Bridge Duty Free, nor did they.

58. Q. So you didn’t call on rent to be paid?

A. No, we did not.

59. Q. And so is it the position though that rent was payable as of August 1st, 2020?

A. Well that’s what the agreement says, but at the time we were still having discussions and working with Peace Bridge Duty Free to see what was going to happen with the Covid. We were asking the Duty Free, for example, right from the outset that they should be opening the store, I think that started, those discussions started in April with them related to that. So there was ongoing discussions throughout, beyond the restart date in this agreement.

...

66. Q. So 18.07 of the lease, the heading is "Regulatory Changes," and it says, "In the event of an unanticipated introduction of, or change in any Applicable Laws," capitalized, "causes a material adverse effect on the business operations of the tenant at the leased premise, the landlord agrees to consult with the tenant to discuss the impact of such introduction of, or change in applicable laws, to the lease." So what I'm talking about is the impact of such introductions of, or change in the applicable laws to the lease. So was this rent deferral agreement based on an impact to the lease pursuant to 18.07?

A. No it was based on the consultations that we had with Duty Free, as required by 18.07.

67. Q. So this rent deferral was based on ...

A. Consultations with Duty Free.

68. Q. So you're saying -- and that's pursuant to 18.07?

A. Correct. We had -- we consulted with Duty Free because they said, 18.07 is applicable, Mr. O'Hara said that right from the outset. We said, "Fine, we're going to consult with you." We did the deferral agreement, we had discussions after the restart date on how this was going to be continued on. We had discussions about a second deferral agreement. All of that was in compliance with 18.07.

....

70. Q. So is it fair to say that beyond August 1st, 2020, the parties have not been able to reach an agreement, come to an agreement, on what the impact to the lease is as a result of the changes in the applicable laws?

A. No. That's not a fair representation. We both agreed that there was an impact on our operations and on Peace Bridge Duty Free operations, and every operation as a result of the pandemic.

71. Q. Right. I don't think there's any dispute. The Authority's not disputing that 18.07 is engaged, as I understand it.

A. We have consulted with Duty Free as required by 18.07.

72. Q. Right. So there's no -- you agree with me that 18.07 is engaged as a result of the changes?

A. Yes.

74. Q. So anyhow, we're in agreement that the clause was engaged. We're in agreement there was an impact -- right, there was an impact to the Authority, there was an impact to the lease, there was an impact ...

A. Yes. Clearly.

75. Q. Okay. And so, since then there's been no agreement between the two parties about what the impact, what the case of the lease is?

A. Not for lack of trying, but correct. There is no, there is no yet -- there is not yet an agreement.

...

88. Q. And it didn't demand payment in 2021 either?

A. Correct. Understanding though, that the store was open throughout this process. So they were actually paying us rent throughout this, the entire pandemic. So they were in fact paying us. It's not like they weren't paying us, I mean, they were paying us.

...

118. Q. All right. And there's no other reason to serve a formal notice of default than as a precursor to terminating the lease in order to comply with the provisions of the lease and/or with the Commercial Tenancies Act?

A. Well we wanted — we wanted the tenant to comply with the lease. Primarily, we wanted the store to open.

...

123. Q. Well it says "exercising its remedies."

A. Right. So I guess that is a remedy, correct?

124. Q. "Exercise remedies under the lease." So that's what you're referring to, is terminating the lease?

A. That's an option.

125. Q. Well what are you referring to here?

A. What we really wanted was the store — for them to cure the defaults in the lease. That's what we wanted. If they didn't, then we wanted to maintain whatever remedies we had, including eviction.

...

148. Q. So would you agree with me that around this time when the Authority determined it was going to exercise its remedies under the lease, that it knew that doing so would cause the receivership application to be brought by RBC?

MR. STANEK: No. You've got the order wrong. RBC was considering the receivership application before this —, before that e-mail. That's why Mr. Mietra called me.

MR. JONES: So you're saying no. The intention to inform — the Authority did not know that it's advising the lender that it intended to ...

A. We didn't advise RBC. They were aware of it already.

149. Q. No?

A. We didn't advise them. RBC was already aware of it.

...

207. Q. And that's all the direction you required to sign the agreement and move forward with it, correct?

A. Correct.

208. Q. And did you sign the agreement?

A. No.

209. Q. Okay. So the direction was to move forward with the agreement, but the board -- but the Authority didn't move forward with the agreement?

A. Well again, what I mentioned earlier, during the discussions at the board meeting, prior to them actually approving the resolution, there was a lot of discussion and a lot of questions, and like I said, I recommended approval of the agreement. The board agreed with that recommendation, however, they also were very concerned about the lack of information that we were getting. So they said to me, we're approving this agreement, but we'd really like to get some greater clarity on some of the information, financial information, and we want to have some certainty that in fact we're actually going to get paid, ultimately.

210. Q. So ...

A. Let me finish.

211. Q. Sorry.

A. So immediately following the meeting, immediately following that meeting, I sent an e-mail to Peace Bridge Duty Free asking them for the information that the board was requesting. Never got anything back. A week later, sent them another email. Never got anything back. Close to another week later, sent them another e-mail. So that was the context of why it was not, why I did not sign it.

212. Q. Okay. You'd agree with me that what you just told me is not reflected in the minutes of the meeting?

25 A. That's correct.

...

215. Q. And at Paragraph twenty-six (26) of your Affidavit you say that the Authority did not sign the second rent deferral, and you say that it was advised in writing on or about November 20th, December 2nd, and December 9th, that the Authority was not going to sign the second deferral, rent deferral and/or further defer rent unless certain conditions were satisfied by Peace Bridge Duty Free. At that time, you agree with me that that wasn't the direction given by the Board?

A. Like I said before, there's the actual formal resolution, and then there's the discussion related to that resolution, and the Board clearly had concerns about -- about the lack of information. So I sought to fulfil the wishes of the Board in getting more definitive information on the finance, which we expected would be a very simple matter, that they could provide this information within the next day or two and we would sign the deferral agreement. That did not happen.

...

257. Q. And then it's also requiring two point one three million dollars (\$2,130,000.00) to be paid in a schedule satisfactory to the landlord and that the Tennant (sic) is obligated to pay rent as it comes due, not

withstanding the payment of rent arrears. So essentially it's got to start paying full rent, the three hundred and thirty-three thousand dollars (\$333,000.00) as of January 1st I guess, that's what it's saying here?

25 A. That's what it says.

258. Q. In addition to paying a million dollars (\$1,000,000.00) and paying back the two million dollars (\$2,000,000.00), so the Authority knew it wasn't going to get — the Peace Bridge Duty Free wasn't going to be able to do that, right?

A. We felt they could have certainly paid the million dollars (\$1,000,000.00) related to — or at least a good portion of the million dollars (\$1,000,000.00) related to the — to the base rent.

...

268. Q. I'm putting it to you that the Authority knew that the Peace Bridge Duty Free store could not comply with this ...

A. Well not ...

269. Q. ... demand and there would be a default?

A. ... no I wouldn't — I wouldn't say that. We know that the owners are independently wealthy, they could have put their own personal capitol into it, that was certainly an option for them. So they were not availing themselves — what — what — what the interim financial statements showed us, what — what our review showed us in December was they were not availing themselves of their own personal resources ...

...

272. Q. When you're saying 'they' who are you referring to?

A. I'm talking the Duty Free shareholders.

273. Q. The shareholders, so not Duty Free itself?

A. Well they — they are the sole shareholders of the corporation, right?

274. Q. Okay.

25 A. So there's four — four members, independently wealthy, have not put any money into the business to deal with the — to deal with the situation, clearly ind — and that's -- it was clearly shown in the interim financial statements, they were not accessing the lines of credit that they had, did not use them, were not applying for everything that they were eligible to apply for, at least based on the information that they had provided to us. So our position was they did have the means to pay for -- for that, at lease a chunk of it.

...

283. Q. But I'm talking about Peace Bridge Duty Free?

A. They are the sole shareholders, they're the — they're the owners of the business. They could have put some of their own personal capitol into the business if they so chose to, they could have used exisiting lines of

credit that they did not tap, they hadn't made application to some of the — some of the programs that were — that — that were available, so they had access to capitol that they were not using.

284. Q. So you're saying ...

A. And what we're saying is why should we bear one hundred percent (100%) of the pain in this thing. And at the same time — at the same time, at that time they had — there were three CERS payments that they could have paid, they only chose to make one in — in — in December of 2020. So you put all of that together, they're not paying us, they're slow rolling us, we have a situation with our end of year financial statements, we at least wanted to get the base rent down, or at least a portion of the base rent, one third of what was owed, we didn't — we weren't asking for all of it, we're asking for one third of it. And then moving forward we say you're not sharing information with us, we want you to pay in accordance with the lease, that's what we said.

...

409. Q. And so I think we touched on this but maybe didn't go — didn't look at it, you know, exactly word by word, but there's no dispute that there was an unanticipated introduction or a change in applicable laws that caused a material adverse affect to the business operations of the tenant here?

A. Yeah, I'm not sure what the pandemic, whether that was law or federal regulations or agreement between Canada and -- I don't know what it — what it was, but the intent of eighteen oh seven (18.07) within the context of the RFP process before the lease was ultimately finalized was related to the regulations related to Duty Free stores, that's what it really related to. Like for example, if the federal government changes the rules or the law as it pertains to the sale of alcohol, which is a big sales — sale maker for all Duty Free store, or for example would have been back, I think it was in the early 2000s when the government changed the law on visitor GST rebates at Duty Free stores, that had an impact on the store. So those are — that's what was meant by the contents of regulatory — regulatory changes, that's the context.

...

450. Q. ... speak with the second place RFP bidder?

A. And on the basis of that I did — I did call them, it was verbal only and it was simply if in fact the Peace Bridge Duty Free was no longer the tenant our concern was the — making sure that the — that we had — and this was while the store was still closed, so it may have been August of '21, I'm just trying to think when we — no, I can't remember exactly, but anyway it was when we were concerned about the store being — being dark and we wanted to make sure that we — and this was at the time when Duty Free was not — was not open. So we wanted to make sure we had an operator that would in fact open the store as Peace Bridge Duty Free was refusing to do so.

...

458. Q. And what was the response?

A. The minimum base rent is four million dollars (\$4,000,000.00).

459. Q. But what was the response when you asked them whether they were interested?

A. They were interested in -- in exploring it and they felt they could open the store quickly if they were asked to. And they were, they were able to negotiate terms that were acceptable to the parties.

460. Q. So they were going to negotiate the base rent.

A. I told them what the base rent was, ...

461. Q. Sorry, was it put to them that, "You can open this if you pay four million dollars (\$4,000,000.00) a year," day one?

A. No, it was put to them, "Here's what the terms on the lease are, this is what we expect it to be." Now remember, this was in the middle of covid, so they would probably -- we did not get into any detail, we -- they indicated that we would have to negotiate the terms of a lease with the conditions that are on -- on the ground, similar to what the proposals we'd been making to Peace Bridge Duty Free.

Just like we weren't insisting that Peace Bridge Duty Free pay all of the back rent or that they pay four million (4,000,000) in 2022, or 2023, or 2024 or 2025.

...

496. Q. Sorry, I'm not sure I understand what you're saying. The factors -- what --?

A. What you're saying is -- you're trying to put words in my mouth by saying that because the -- this - - there was a voluntary to close, that that would've changed the fifty percent (50%) rent abatement. I don't know if that's -- if that would've been the case. What I'm saying is that we offered a fifty percent (50%) rent abatement because we felt that was reasonable given all the -- all the circumstances. We also considered, among other factors, that the -- that they were closed, that their -- PBDF shareholders need -- needed to play a part, and also based on what other arrangements were made by other duty free operators that gave much less than fifty percent (50%).

497. Q. Right, so ...

A. So what we're saying is our fifty percent (50%) is -- is a very reasonable -- is a very reasonable offer. Just -- just pick and choose one item is not fair.

498. Q. No, I'm not picking and choosing. I'm saying as I understand -- I'm trying to understand what your evidence is here in the Affidavit. You're saying the Authority considered, among other factors -- what you're saying is, these are some of the factors that the Authority considered in coming to what it was prepared to provide Peace Bridge Duty Free in terms of a rent abatement, is that --? I'm just trying to understand what you're saying in the Affidavit.

A. I mean, I'm reading it to be that it's a whole host of factors that that's the basis upon which we are giving a fifty percent (50%) rent abatement.

499. Q. Right, so ...

A. Read the whole paragraph.

500. Q. And I'm trying to isolate why -- what impact this factor had. And so all this being equal, the fact -- you're saying that the fact that they closed was a reason that the rent abatement was where it was. In other words, if they had opened that would've been a factor in favour of more rent abatement, because they're closed it's a factor -- is that what you're saying?

...

A. I don't understand the question, 'cause I do not understand what -- what the question's trying to achieve here, I don't get it. Like, read -- read the whole paragraph, "[Inaudible] assert continue to expect that the Authority would take into consideration the fact that border restrictions impacted the ability PBDP had to generate sales." We agreed, we took those factors into account for providing fifty percent (50%). We also have the other factors that come into play, which -- which we listed before. But did we assign a ten percent weight to one thing and a thirty percent (30%) weight to something else? No.

...

501. Q. No, it was some weight.

A. It's a combination of factors, all of these factors came -- came into -- into place.

...

515. Q. So do you agree with me that the base rent component in the Peace Bridge Duty Free is the highest base rent for a Canadian land border duty free store?

A. I don't know, I don't know what the base rent, I have not reviewed all the other base rents.

516. Q. Are you aware of any that are higher?

A. I'm not aware of any that are higher and I'm not aware of any that are lower, I don't know. Like I said, we did not establish the base rent, that was established by the Peace Bridge Duty Free when they submitted their proposal.

...

590. Q. And in paragraph seventy-one (71) you say that the Author -- that "The Peace Bridge Duty Free shareholders cannot sit on the sidelines." So what you're saying here is essentially that there has to be a guarantee from the shareholders?

A. We're -- we didn't say that, we said we're looking for the shareholders to have some skin in the game.

591. Q. What does that mean?

A. That we're not prepared to subsidize Peace Bridge Duty Free store on their own and give one hundred percent (100%) rent abatement and rent abatement moving forward. Like I said, there had to be some -- has to be some shared -- some shared payments.

592. Q. From the sharehold -- like, you -- you want the shareholders to pay.

A. Something, correct. Or whatever other means of capital they can access, bank financing or whatever other things. Or bring in more partners into it, doesn't matter to us how that happens. But -- but we -- the whole point of this is we're not bearing one hundred percent (100%) of the covid impacts.

...

598. Q. So you're telling me that in the spring of 2021 the Authority hadn't decided they wanted to terminate the lease?

A. What we wanted the duty free to do was to open the store, that's what we wanted to do. We met, I think it was in May, with Mr. O'Hara and Jim Pearce at our offices, we had a lengthy discussion, duty free made it very clear to us that they were not gonna pay rent, that they were not going to agree to move -- go back to operating under the existing lease under any circumstances. They made it very clear how they wanted to move forward in our -- in our discussion.

...

615. Q. So signing the rent abatement agreement was consulting?

A. That was part of it. We were trying to come to grips with the -- with the situation, we were working with them to do that. We were going back and forth, we were consulting how best we can make this work. That continues -- continued throughout the last couple of years, we're still having those discussions.

616. Q. So paragraph six, the second sentence you say that, "The Authority did not agree on article eighteen oh seven (1807), or anywhere else in the lease, to provide the Peace Bridge Duty Free with a rent abatement or to adjust the minimum rent payable under the lease based on any change in applicable laws." You'd agree with me that eighteen point oh seven (18.07) was a vehicle by which the parties would reduce base rent payable in the appropriate circumstances?

A. No.

617. Q. Well isn't that exactly what the Authority sought to do through the further negotiations?

A. In this case we did, but that's not what eighteen oh seven (1807) says.

618. Q. Right, so it's in the appropriate circumstances where it's reasonably -- where it's reasonable that's what would happen.

A. No. I mean, we could've disagreed, we could've said something totally different. I mean, eighteen oh seven (1807) says that we have to consult, it does not predetermine the outcome of those consultations, eighteen oh seven (1807) does not predetermine that.

619. Q. Right, it depends on the ...

A. Depends ...

620. Q. ... factual circumstances and the factual matrix that existed at the time and how the impact of the change in laws affects the business, right?

A. Yeah, and at the end of the day the board has to approve any amendment to the lease. The lease is as it is until it gets amended, and there's nothing in eighteen oh seven (1807) that, in any way, stipulates that there will be a rent abatement given certain circumstances, that's not what it says.

621. Q. No, it's more flexible than that?

A. The point is, we could've consulted throughout and there could've -- we could've said there's not gonna be an rent abatement, nothing for the past rent, nothing for the future, we would still have complied with eighteen oh seven (1807).

622. Q. That's your position? That's your view?

A. Because if we consulted and we come to the conclusion that's what it would've been. We've complied with article eighteen oh seven (1807).

623. Q. So there's no obligation to reasonableness?

A. Depends again, depends on the circumstances. In this particular case we made it very clear that we believe it is reasonable, given the circumstances, to give a rent abatement. But it was not presupposed by eighteen oh seven (1807) that we must give a rent abatement.

624. Q. So in the circumstances where it's reasonable and appropriate there can be a rent abatement ...

A. There can be.

625. Q. ... resulting from eighteen point oh seven (18.07).

A. There can be, but it did not say there must be.

626. Q. But it's not your view of this clause that it allows the landlord to unilaterally amend the lease as it sees fit.

A. The lease has to be executed by two parties.

627. Q. Right.

A. So we don't have, just like Peace Bridge Authority did not have, the authority to arbitrarily pay twenty percent (20%) rent, that's a violation of the lease. They made that arbitrary decision, we have never done that.

...

...

53. Q. Okay, so you're aware of Section 18.07 of the lease?

A. Yes.

54. Q. Okay. And that section of the lease was not part of the original form of lease that formed part of the RFP proposal?

A. Correct.

55. Q. So it was added afterwards within the thirty (30) day negotiation window?

A. Mmhmm. Yes, sorry.

...

61. Q. You'd agree with me that the Section 18.07 deals with catastrophic events that would negatively impact the business of the Duty Free store as a result?

...

A. Doesn't say anything about catastrophic events. It states, "Regulatory changes in the event an unanticipated introduction of or a change in any applicable laws causes a material adverse effect on the business operations of the tenant at the leased premises. The landlord agrees to consult with tenant to discuss the impact of such introduction of or change in applicable laws to the lease."

62. Q. **Right. And so you would agree with me that this clause would be engaged when there's a catastrophic event, and in particular, a change in regulatory ...**

MR. STANEK: Those are two questions.

MR. JONES:

...

69. Q. **Anyway, my question is that to give it some meaning when that happens some -- when the clause is triggered something would flow from that, like, there would be some action.**

A. There would be a discussion.

70. Q. **And that's it?**

A. **On the impacts. That's all that's required by the lease. I would speculate to say if anything would result from any type of discussion.**

...

71. Q. **Okay. And you'd agree with me that catastrophic changes would engage that section.**

A. It doesn't say catastrophic, it says regulatory.

72. Q. I know what it says, but the intention is ...

A. I don't know. I would say no, it's not anything that doesn't have to do with an applicable law. If it was some other type of catastrophic event then I would say no, would not trigger that clause.

73. Q. A change in applicable laws that resulted in a catastrophic impact on the business would engage that.

A. I think just any change in the law that impacts their business in a material way triggers eighteen oh seven (1807).

...

74. Q. Okay. And you had a discussion with Mr. Pearce in July 2016 ...

A. Mmhmm. Yes, I did. Sorry.

75. Q. .. about catastrophic events?

A. I had a discussion in July 2016 with Mr. Pearce about a lot of different things relative to the lease. He provided a list of items to achieve, believed to be catastrophic, which he wanted the lease changed for to include abatements and certain things of that nature in which we declined.

76. Q. Would you agree with me that you said that you declined for most of -- or, some of the items he listed, but you agreed that regulatory changes would be included.

A. We -- we -- I stated that all of the things that he listed were normal business assumptions with the exception that if there were to be a regulatory change that would materially impact their business, and that's why eighteen oh seven (1807) is in there. There was no discussion, or assurance or anything that discussed abatement of rent in -- under any circumstance that would be included -- that is included in the lease.

77. Q. But you didn't discuss the need for an abatement with Mr. Pearce.

A. He requested it and we said no on multiple occasions.

78. Q. Well didn't you say -- well, what you said is at this email, July 19th, 2016.

MR. STANEK: Maybe we've got to put it to her.

MR. JONES: Yeah.

MR. JONES:

79. Q. So point number three, right, you say, "You have also requested and had further -- we had further discussions on the following topics." And then number three is lease discussion in the event of a catastrophic event, "We reviewed the examples listed as catastrophic, we agree that the changes in government regulations could materially impact the business and have added Section 18.07 to the lease. All other events were routine events of border crossing."

A. That's what I stated in my email.

80. Q. **So you're saying no to all the other things, but yes to regulatory changes.**

A. We acknowledged that regulatory changes could materially impact the lease, we did not ever agree to abatement of rent in that event, as per eighteen oh seven (1807) in the lease. As -- as this states, eighteen oh seven (1807) was added to address that particular concern that they had.

81. Q. **Right. And so what was his concern?**

A. **That a catastrophic event, as he defined, this was one in many of the list of things that they**

...

92. Q. And during that meeting he conveyed to you the concerns about something catastrophic happening behind -- beyond the tenant's control that would materially affect its sales and that it had concerns that it wouldn't be able to pay its rent and would need a rent abatement?

A. He was concerned because we were undertaking a construction project at the bridge, which hadn't been done for a hundred (100) years or so -- well maybe not quite a hundred (100) years, so he was worried about that. And so he talked about a bunch of different things through this list of what he wanted in the lease.

93. Q. Okay.

A. These are his requests.

94. Q. Right.

A. And so what ultimately we agreed to is what's in the lease.

...

104. Q. So if we start in the middle of the page it says, "This involves a third party. Not typical because there would be no loss because rent abatement -- and we do not want to get involved with the insurance company."

A. That's what -- that appears what that says, yes.

105. Q. Right, so what you're saying there is, if there's a rent abatement written into the lease there's a concern that the insurance company will say, in response to a claim being made, "Well there is no loss because you have a rent abatement written into your lease," you would agree with me that was the conversation?

A. The conversation -- this is what Peace Bridge Duty Free wanted in the lease, was rent abatement due to a bridge closure related to the construction project.

106. Q. Right.

A. We said no because you can insure for that on your own and we do not wanna get involved as with third parties relative to that. And if there were to have been rent abatement in the lease then there could be problems because an insurer would say, "Oh, you already got relief and we're not gonna pay." I'm not an insurance expert.

...

112. Q. So "We agree to give" something "leased premises. We have obligations." Okay, and then the bottom paragraph it says, "In the event that during the term, and should it be necessary that issues arise, something catastrophic beyond the tenant's control, including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, et cetera, that materially impact the tenant's Duty Free sales, then the landlord and tenant both acting reasonably and in good faith agree to discuss the lease, including but not limited to the rental terms -- term, et cetera."

A. That's what that states. And there's a little handwritten note by me, it says, "No".

113. Q. Yes, so it says, "No" and there's an underline. Do you know when that handwritten notes was put there?

A. Would've been at the same time of all the other notes.

114. Q. Okay, so it's either during the meeting or after the meeting?

A. Yeah.

115. Q. Okay. So you're saying no to the whole paragraph?

A. I would say yes, I was saying no to the entire request, what they wanted added. At the time when we had this meeting, I -- my note is no to this request.

122. Q. So do you recall specifically the conversation being had with Mr. Pearce when reviewing that paragraph?

MR. STANEK: Which paragraph?

MR. JONES: Sorry, the bottom paragraph of the handout we were just looking at.

MR. STANEK: The handout or the email?

MR. JONES: The handout.

MR. STANEK: The handout.

A. So that's this?

MR. JONES:

123. Q. Yeah. Because ...

A. And you're asking me if I recall the exact conversation? No, I don't recall word for word what the exact conversation was. I will go by my notes, as you're going by my notes on this page, as the best recollection of what was verbally discussed in 2016, which there's a word that says, "No", which meant we didn't agree with any of what he wanted these -- this language put into the lease and we said no. After -- I'm certain after I had my meeting with Mr. Pearce, I went back and had discussions, attor -- I could've had attorney discussions, I could've had discussions with Ron, I'm not acting on my own. This email was sent to Mr. Pearce copying Ron Rienas the following day. This is what came out of the meeting. He asked for many things, again, his catastrophic event, "We agree that

changes in governmental regulations could materially impact your business and have added Section 18.07 to the lease.” So our response to his request to catastrophic events related to regulatory changes is eighteen point oh seven (18.07) in the lease.

124. Q. I understand.

A. Okay, that’s --.

...

137. Q. So you’re -- so why were you writing “Complete” or “With a total secession of traffic,” what was the purpose of those notes?

A. I believe again this was what was presented, as words that they wanted to have included in the lease, ...

138. Q. Right.

A. ... through our discussions. Sure we were talking. And this says, “In the event there’s a closure,” and so I don’t even know if I said this aloud to Jim Pearce or not, it might’ve been a note for myself, “Complete closure.” And these were things that we were gonna take back, review with legal counsel and consider whether we would add these things to the lease or not. And if you look at the lease at the end, they’re not in there because we did not agree.

...

148. Q. Did you make those notes on the page?

A. That looks like my handwriting.

149. Q. Okay. And so there’s sort of a semi-circular parenthesis around “As a guideline, material impact would be one in which Duty Free sales declined over a comparable three month period by five percent or more”?

A. I put those parenthesis there, this paragraph was presented by your client to us and it’s -- no way, that’s not catastrophic. And as you see, none of this is in the lease because no.

150. Q. So what did you say to Mr. Pearce at the meeting about this paragraph?

A. In the -- if you go back to the email ...

151. Q. No, no, I’m asking ...

A. I don’t ...

152. Q. ... at the meeting.

A. ... recall what I verbally said to him at the meeting, I’m sure I told him “No”, or “We’ll review it” or something along those lines. ‘Cause if you go back to the July 19th email where we say, “We reviewed the examples listed as catastrophic and all the others listed are routine events.”

..

154. Q. In your email you don't say anything about "The landlord and tenant both acting reasonably and in good faith, agree to amend this lease including but not limited to the rent terms, et cetera, as appropriate and in a fair and equitable manner."

A. I don't see it in my email and it's not in the lease, this is what they requested.

155. Q. Right.

A. Just because they requested it doesn't mean we agreed to it in principal or any other sort of fashion, we did not and we do not.

156. Q. I'm just --. You would agree with me that there's more to this paragraph that's not addressed specifically in your email.

A. I don't understand what you're asking me, "There's more to this paragraph."

157. Q. Well --.

A. The paragraph is here.

158. Q. So it says, basically, ...

A. Everything from the meeting was addressed in this email and/or the final lease. I don't understand what you're asking me.

159. Q. Okay, maybe I can help clarify. So what I'm -- what I'm indicating to you is, first there's the list of -- the list of events that Mr. Pearce, correct me if I'm wrong, these are the events he said were catastrophic that would require consideration.

A. These were the lists of events that he wanted consideration and to have the lease include words that say, "Rent abatement" connected to them.

160. Q. Correct. And then he goes on to say, "If any of these events happen, that materially affect the Duty Free sales, then the landlord and tenant, both acting reasonably and in good faith, agree to amend the lease including but not limited to the rent terms -- term, et cetera." So what I'm saying is, he said if these things happen then this will happen, right? That's essentially what's in his email -- or sorry, in the handout here.

A. I mean, his paragraph just says what the paragraph says.

161. Q. Yes. And so your email addresses the list of events.

A. It appears to.

162. Q. And your email doesn't say anything about the consequences for one of those events occurring as they're -- as it's described in this handout.

A. I don't under -- I'm getting -- you're -- this paragraph is in his minute -- or, in his list of things.

163. Q. Yeah.

A. You see I have a handwritten says -- that says, "Too far. Agree and amend." So that's too far, the Authority is not gonna amend the lease for any of these reasons, a guaranteed amend -- no. So in the next day email this is the response from this meeting. I don't know what you're trying -- you're con -- I'm getting confused on what you're trying to infer from by just constantly repeating the same paragraph back to my email. My email addresses what happened at this meeting is in this email and attaches the final version of the lease.

164. Q. So you pointed out "Agree and amend" is got a square around it, you put that square there?

A. Yes.

165. Q. Do you remember if it was before ...

A. With the words "Too far".

166. Q. That says, "Too far"?

A. 'Cause we would not do that.

167. Q. So agree to amend, that's what you wouldn't agree to, right?

A. In my opinion. When I was meeting with Jim Pearce, yes, these are my notes of my opinion, "Too far".

168. Q. Okay. So the -- and what I'm trying to ask you is it -- the words "Too far" are pointing to that circled, "Agree to amend," right, so that's what you're saying is too far?

A. Those particular words, yes. And then as you read in the July 19th response email, everything else in here -- the only thing that we acknowledge is that a change in regulations, as it states in eighteen point oh seven (18.07). That's what came out of this whole meeting, that's what that -- that's the answer to all of his requests.

...

176. Q. Right. So what I'm suggesting to you is, you told him that "We don't agree with the vehicle traffic decline or the bridge constructions, we do agree that changes to regulation apply. We don't agree that the lease will specifically say that it will -- that the landlord will agree to amend, we're not going to agree to that specific language, but everything else here is covered by eighteen oh seven (1807)."

A. No, that's not what that says.

177. Q. You disagree with that?

A. I do.

178. Q. Okay.

A. Because if everything in this paragraph was supposed to be eighteen oh seven (1807) it would've been at eighteen oh seven (1807). You're trying to --...

179. Q. So you're saying ...

A. ... I feel like you're trying to take what we talked about at a meeting and imply a section in the lease that that's what the section of the lease means. The section of the lease, if that's what it meant it would state that.

180. Q. Well didn't -- isn't this what Mr. Pearce brought up with you?

A. Mr. Pearce brought up with me this whole list of things that they wanted rent abatement for in the lease, we said, "No, we are not providing rent abatement."

181. Q. So you specifically said no to him in that meeting, you're telling me?

A. I cannot recall if I specifically ...

201. Q. You're right, no, you're absolutely right. I used the wrong term. So it's a change in applicable laws that causes a material adverse effect to the business, that's ...

...

A. It just says a material change, I don't think it says the adverse. Oh it does, okay, I'm sorry, yes.

206. Q. Right.

A. ... operations of the tenant."

207. Q. Right. So anyway, you'd agree with me that that's different than the usual decline in traffic risk that any tenant assumes as part of their business.

MR. STANEK: I don't understand that question.

A. I don't, either. Because, I mean, a regulatory law -- I don't know how a law is different than any other business risk. You know, the people in Ontario are selling pot right now, the government decides to change its rules and you don't sell --can't sell marijuana anymore, I mean, that's a risk you took by getting into that line of work. People who used to sell cigarettes, laws change, you can't be in that business anymore. I don't understand what you're asking me.

208. Q. Yeah, so in the normal course if you have a lease and laws change, you know, that's your problem, tough luck, right?

A. Well, it could also be if -- if -- what if, for example, the law change was and CBSA decides there's gonna be no more Duty Free's? So then I guess we would discuss the impact to the -- to a lease and whether you continue to have to still pay rent when your -- the government's put you out of business or - - or your law is so that you can't operate.

209. Q. Right, that's what this is for.

A. I don't -- it just says a regulatory change, I don't know what that's for. I feel like you're putting words in my mouth, I feel like I've answered this fifteen (15) times to Sunday, fifteen (15) other different ways. I don't -- if you could just ask me very clearly what it is that you're asking me to agree to or -- or not agree to you because I feel like you're changing what you want me to answer you whether I agree or not.

210. Q. No, you answered my question perfectly, thank you. All right, would you agree with me that the level of consideration that would be provided in the event eighteen oh seven (1807) is engaged would increase ...

211. Q. So for example, in the example you gave, if the Canadian Border Authority changed the regulations to say there's no more Duty Free stores, what -- is your view that the landlord would have satisfied its obligations if it had discussions that, you know, "Yeah, that's too bad that they did that to you, you owe us full rent," is that a landlord acting in good faith and satisfying ...

A. That would be something that would be discussed with our counsel on what -- what their legal advice would be for how we would deal with that. You're asking me to make answers about what the Authority would do, I'm not in a position to answer what the Authority would do because it ultimately is up to the board of directors to determine what the Authority would do. This clause would say that we would need to have discussion, discussion would occur, discussion would be done with our counsel. And then whatever those discussions were, I'm sure as what our normal course of action is would be to the board. You're asking me to speculate on something I have no idea what possibly an answer could be.

...

A. The concerns of the Peace Bridge Duty Free were discussed with our attorney. We discussed our opinions, relative to what they asked for, with our attorney. Our attorney drafted eighteen point oh seven (18.07) based on their legal expertise. I'm not gonna talk about what discussions we had with our attorney because I feel that that's privileged information, unless I'm directed to do so by my attorney who is here.

...

286. Q. So you're aware that there was a rent deferral agreement in April 2020 that expired in July 2020.

A. With Peace Bridge Duty Free?

287. Q. Yeah.

A. Yeah.

288. Q. And then the parties continued, essentially, under the same terms for a few months afterward, after the agreement expired without any changes, is that right?

A. I think the agreement expired and it just kind of --.

289. Q. Nobody did anything.

A. There -- I guess, I wasn't necessarily part of every single communication or whatever that may have been occurring at that time. But really, nothing much happened.

290. Q. The status quo continued, effectively.

A. We weren't being paid during that time, correct.

291. Q. And then there was a subsequent rent deferral agreement that was prepared in October.

...

293. Q. Anyway, ...

A. I'm aware that there was a draft of a second deferral agreement.

294. Q. And you're aware that it was sent to the tenant, and it was signed by the tenant and returned to Mr. Rienas, and then it was taken to the board for the board's approval.

A. I believe it was -- it was taken to the board.

...

302. Q. The email proposes a resolution to the directors to approve it?

A. This is just a recommendation that's included in the board report, it's up to the board whether they decide they're gonna approve it or not, and they didn't.

303. Q. Right.

A. So then the deferral agreement's not approved.

...

317. Q. Okay, do you -- you agree with me that the Authority changed positions significantly from this email on November 19th into how they were interacting with the tenant after that board meeting.

A. No.

318. Q. Okay, do you agree with me that instead of granting a rent deferral until March 31st the Authority demanded payment of a million dollars (\$1,000,000.00) before the end of December?

A. I believe that there was a letter that was sent that demanded rental payment.

319. Q. And so that's a significant change in position.

A. Pos -- position to what?

320. Q. To saying that, "We're going to allow you to defer rent until March 31st".

A. The board never said that they would allow them to defer rent, that was a deferral draft agreement that was proposed to the board. They had discussion, they did not accept it, and so there were other discussions, I'm assuming that were done, and then the demand letter in December was what was sent forth.

321. Q. So you don't agree with me that the position taken from -- by the Authority prior to this November meeting, the position that the Authority took with respect to the Duty Free tenant before the meeting is considerably different than the position it was taking after the meeting.

A. I don't think it was a specific meeting in time, and I don't know to what you're referring. If you're trying to say everything was honky-dory with the Peace Bridge Duty Free until this meeting and then everything went south, that's not correct.

...

340. Q. Okay. Tab 'C' Thirty-Three (33), you send an email to Mr. Rienas and you said it's in response to responses to questions that were asked by the Authority. And you say, "The continued lack of meaningful communication is maddening, they're still not providing the most important information requests to we made." And

you say, "Once I read through the attachments I will let you know what else might be of concern." But I just want to show this to you, and on the next page it looks like you've written in some notes to the paragraphs.

A. Can I see that?

341. Q. Right?

A. Mmhmm.

342. Q. So you say, "Finding out their current financial position in March 2021 is too late"?

A. Correct.

343. Q. So what is it too late for?

A. In the lease they're supposed to notify us if they're receiving -- if they are undergoing any sort of financial difficulty that would impair their ability to pay rent. I have -- there's an email, which must be in this documentation somewhere, where that question is asked of Mr. Pearce and he says, "No, there's no such thing." We are permitted to ask them, when there's questions about their abilities to pay rent or other things, for internal financial information. March 2021 would have us waiting until March of 2021 to see what is happening to their business and where they are financially through December 20th, 2020. So we are permitted, per the lease, to request internal financial information and they're obligated to provide it when it is asked.

...

350. Q. Okay. And what would you do with that?

A. We would discuss it internally to determine what next steps we would take.

351. Q. Like what?

A. I don't know.

352. Q. Was -- so why would it be too late if you didn't even know what ...

A. Do you read financial statements? If you're gonna read a financial statement that's six -- from six months ago, just like if you're gonna look at a stock market, how it was doing six months ago, is that gonna help you make a decision on what to do today? No. There's more up to date information rather than waiting a year for someone's annual audited financial statements. When you run a business you have internal financial statements that you use to help you operate your business, we are permitted by the lease to request internal financial information which is what we did. My statement simply means waiting 'til March to find out where they are as of November 30th

...

353. Q. Okay.

A. ... is too late.

354. Q. So you did some research into the CERS program, it looks like from the emails?

A. I looked up some information online.

355. Q. Okay. And was that with a view to determining whether or not the Authority could evict?

A. It was to determine whether they were complying with paying us as per the CERS program, ...

356. Q. Okay.

A. ... which was within -- you're supposed to be -- the -- the landlord is supposed to receive written notification, which is the CERS application, to notify that the tenant applied for CERS. And then there's so many days that the tenant has to pay the landlord the CERS money they received. We had a difficult time receiving all of the notifications from your client in any kind of timely manner. And oftentimes we wanted to determine that they were paying as per the CERS program.

357. Q. And you were looking into whether or not the Authority could evict them notwithstanding the CERS program?

A. If they were in violation of a program, and the Authority was able to -- to use its -- whatever legal remedies it wanted to, then it -- it needed to be -- to understand what its options were, what legal remedies were provided for that we were able to exercise if decided to do so.

...

361. Q. Okay. And so December 1st, 2020, you're aware at that point that there's no way that the Duty Free store can afford to pay that without any sales.

A. I don't believe I'm aware that without any sales they were unable to pay that. One of the reasons why we asked them for financial information.

362. Q. Okay, did you believe that they were able to pay that?

A. I don't know what their resources are. Companies have resources besides just current sales.

363. Q. Okay. So you didn't know if they could afford that. Did you form some sort of belief whether they were able to afford that?

A. We needed to ask for their financial information in order to determine whether they could or they couldn't. We had no visibility as to whether they have -- shareholders have ability to pay, whether they have financial, revolving financial credit agreements or anything of that sort.

...

373. Q. You'd agree with me that you had discussions about trying to get around the CERS eviction moratorium?

...

A. No.

374. Q. You didn't have any?

A. Did not have discussions to get around the CERS moratorium.

375. Q. Did you keep track of the date when the tenants eviction moratorium protections would end?

MR. STANEK: You mean did you -- did they monitor your client's compliance with the law and the only thing that was stopping the eviction, is that what you mean?

MR. JONES: Counsel, I asked the question.

A. We monitored the Peace Bridge Duty Free's compliance with the CERS program as per legal advice.

MR. JONES:

376. Q. Okay, did you do any research on your own about what eviction rights might be available?

A. As I already stated, I read online what the parameters were of the CERS program, and if a tenant chose to not follow the CERS program then yes, their protections -- the eviction moratorium, under the CERS program, is no longer available to them.

377. Q. Okay, I want to take you to Tab 'D' Fourteen (14) of the productions, and it's a March 14th email that you sent. March -- sorry, March 30th, 2021 email. And it's an email to Ron Rienas, and specifically I want to draw your attention to the last paragraph. And you say, "I feel it is essential that we start developing a legal strategy to secure repayment of 2020 rent arrears. The next steps, assuming they will continue in default, as it appears from their actions to date, that they have no intention of curing the default nor open the store anytime soon." And then you say, "Perhaps we stop reminding them of their obligations under the CERS program and the third CERS periods available and if they fail to provide us with proof required for eviction protection, we proceed with our right to exercise our remedies under the lease." Do you remember this email?

A. I don't recall it, but this is my email.

378. Q. And so what are you expressing there?

A. I'm expressing what our rights are as a landlord of where we stood with the Peace Bridge Authority at that time.

379. Q. So at that time you want to proceed with eviction?

A. At that time we were going to monitor their compliance with the CERS program in order to protect our interests as a landlord, just as any other business would do to protect their own interests and to make sure that people are complying with the legal requirements. To this date they hadn't paid us rent, every proposal they proposed insisted upon complete forgiveness of back rent.

There's a lot -- this -- these certain emails are part of a larger chain of emails that are taken out of context. But yes, this is what it says, I find there's nothing wrong with that, monitoring how your client was complying with the Canadian Government CERS program.

380. Q. Well isn't that beyond just monitoring? And you're suggesting that rather than reminding them, "We should just take the opportunity to evict them if they don't -- if they let it slip".

A. They didn't -- your client didn't let things slip, we reminded them and reached out to them repeatedly, we communicated with them multiple, multiple times, all the time, every month. Ron reminded them multiple times, I think almost all the time about their obligations under CERS. We would request their CERS verification, it would not be sent to us. So -- and after this, too, there was also a meeting in May of 2021 to discuss their financial situation with them, relative to all these things.

386. Q. Okay, so ...

A. We -- just -- just so you can stop there, at the May 2021 meeting we did ask for guarantees.

387. Q. And why were you asking for guarantees of non-parties?

A. They weren't a non-party, they're shareholders of -- of the tenant, they're owners of the business.

388. Q. So they have to provide a guarantee?

A. They didn't have to, we requested it. It's normal course of business for people to request personal guarantees on money that's due to them. When -- when people make loans to people it is standard practice in many times to request a guarantee.

389. Q. So ...

A. To that date we were unable to get any kind of resolution with your client. We asked for certain things just like they asked for things, we asked for things, too. They refused.

395. Q. Would you, would you guarantee a business that had zero sales, in the middle of a pandemic, and expose yourself to millions of dollars?

A. Doesn't matter what I would do. If it's my business, and I'm the one who believes in it, and I'm the owner, owners -- owners put in a lot more, yes.

396. Q. I think it has to do with reasonableness.

A. Well why are we the arbitral -- arbiters of reasonableness? We requested a guarantee, they declined, period. It's not unreasonable for us to ask.

10 397. Q. And there was no requirement for the tenant to retain any earnings in the lease, was there?

A. In the lease, no.

398. Q. And the Authority didn't require that as part of the RFP process?

A. At the time, no.

399. Q. So you had a meeting with the Authority -- sorry, with the Duty Free representatives in May 2021?

A. Yes.

400. Q. And you prepared a memo to file ...

A. Yes.

401. Q. ... of that meeting?

A. Yes, I did.

402. Q. ...What was the purpose of this meeting?

A. The purpose of this meeting was to have discussions with Mr. Pearce and Mr. O'Hara on what the intentions were of the Duty Free going forward. The store was still closed at this time, restrictions had been eased at the border. So it was to discuss their financial position just like -- you know, you wanna point to eighteen oh seven (1807) discu -- discussions. That's what we were having, discussions.

403. Q. And so at that point you were trying to get them to put a personal guarantee on the table?

A. It was one of the many things we discussed at that meeting. We discussed what was their plan, were they -- what other government programs were they looking into, what other things were they going to do to try to help themselves and us so that we could get through this -- this time of them not paying rent.

404. Q. So was it all about what they were doing? Was there anything about what the Authority was doing?

A. As far as -- what do you mean what the Authority was doing?

...

406. Q. Like in terms of rent relief or abatements discussed at this meeting?

A. I'd need to look at the notes. They had already put forth their proposals multiple times that the board had reviewed and had rejected. The board wanted us to have a meeting, which we did, to talk to them about what else -- "Where are you? What is your plan. Wow are you planning to come out of covid?" Because they were very difficult to get conversations with and information from. This was after we finally got their financial statements and other interim financial information. We asked to have a meeting with them to discuss what those financial statements showed because I remind you, Mr. Pearce made a statement, "No, there's no adverse financial things going on," and yet they got a qualified opinion about their ability to continue as a growing concern that year from their auditor.

407. Q. Okay. And so would you agree with me what you were trying to do was essentially get them to give a guarantee before the lease was -- before the Authority exercised its right to terminate the lease?

A. No, we were talking about many different options, that was one of them on the table.

408. Q. Okay.

A. We also asked them if they planned to resume the lease after the pandemic was over as it existed, and they said, "Not a chance." It's all in the notes from the meeting.

...

411. Q. I mean, is there any point in time where the Authority did not -- was not of the -- did not believe that the tenant was applying for CERS?

A. Yes.

412. Q. Okay, why is that?

A. Because we requested them to provide us with the proof of their applications and they would not. Multiple times we asked and they wouldn't.

...

414. Q. And the Authority wanted them to do it faster so they ...

A. We wanted them ...

415. Q. ... could evict the tenant faster?

A. Not evict the tenant faster. But it would've been an effort in good faith, "If period four is open for CERS, I'll apply for period four. And as soon as I receive period four money, I will remit it to you, Authority, because I know that I haven't been paying you rent for a year and a half."

...

467. Q. So I think that's consistent with what you told me earlier, that there was not going to be a specific provision for rent abatement, right?

MR. STANEK: Do you want to read paragraph seven to ten of the ...

A. Yes, please. Yeah.

...

A. And I think I did answer this question already in the stuff we did earlier and I said, "No, there was no rent abatement."

...

475. Q. He said, "A rent abatement that would be in proportion to what Duty Free could afford to pay during the affected period having regard to its gross sales."

A. No.

...

477. Q. Okay. And he attaches the exhibits that we've seen. And then it says, "At the July 18, 2016 meeting, Ms. Costa," you, "on behalf of the Authority conveyed to me that the Authority did not want the language of Subsection 18.07 of the lease to expressly refer to a formulaic rent abatement," is that correct?

A. We were not gonna put rent abatement in the lease.

478. Q. No rent abatement of any kind?

A. No, none of any kind.

479. Q. Okay. And he also says that you conveyed to him that you did not want to put in eighteen point oh seven (18.07) a right to a rent abatement because it concerned such an expressed contractual right that might prejudice the ability to successfully make a business interruption claim in the event of an event that was covered by

insurance by reason of an insurer arguing that the contractual abatement right meant that, no, or a reduced loss existed in terms of any right to be compensated by insurance. Was that the reason that was not included in ...

A. No.

...

485. Q. All right. Then he says, paragraph eight, "However, Ms. Costa made it very clear to me that the landlord did not, in fact, object to the need for a rent abatement to address events including changes in regulatory rules that cause a material negative impact on Duty Free's business." Did you make it very clear to him that you did not object to the need for a rent abatement?

A. No.

486. Q. Did he express that he needed a rent abatement?

A. He might've talked about wanting rent abatement for a variety of things which we've already talked about. And -- no.

487. Q. So you never said this to him?

A. No.

...

489. Q. Paragraph nine, "Ms. Costa made it crystal clear to me," Mr. Pearce says, "that the intention of the Authority was that when circumstances required it and Subsection 18.07 of the lease was triggered, with no right to business interruption insurance proceeds, that a rent abatement would be implemented."

A. That is incorrect and false, that was never stated, that is not the intent, it never was.

490. Q. And then he says, "Given the lengthy landlord/tenant relationship to date and our generally good relationship with the Authority over that period, I had no concerns about taking Ms. Costa at her word." He doesn't say -- doesn't put any words in your mouth there, so I'm not going to ask you about that, okay? And he then talks about the email of July 19th, which we've discussed. And then he says, at paragraph eleven (11), "I want to emphasize that it was expressed to me by the Authority that the only reason Subsection 18.07 does not explicitly say, 'Minimum base rent will be abated' is because the Authority was concerned about the language of Subsection 18.07 of the lease impacting receipt of insurance proceeds as noted above," is that correct?

A. No.

491. Q. Do you have any theory, or information or belief as to why Mr. Pearce would say that?

A. I believe, and again it's just my belief, that he -- this is what they asked for, and so because it's what they asked for I think he believes hopes or interpreted, 'cause that's what he wanted it to mean, that that's what eighteen oh seven (1807) means. It doesn't. There's subsequent emails beyond July of 2016 in which I expressly say to Me. Pearce, in October 2016, that there is no -- I believe it might be in a subsequent one of Ron Rienas's Affidavits, that under no circumstance is there any abatement of minimum base rent, to which he replies, "Yes, thanks."

...

...

161. Q. In one of the board meetings, and I think this was either in November or December 2020 or thereabouts, do you recall there being a proposed resolution or resolution directing or authorizing staff to negotiate with the second placed RFP participant?

A. Well I don't recall, there was always discussion around what we were going to do if this thing didn't work out, but we also received counsel on such things so I — I don't recall us giving any direction to go talk to another party.

162. Q. There was a discussion about that?

A. Yeah, certainly there would have been discussion on what we're going to do next.

163. Q. Right.

A. 'Cause there was concern for the solvency of the operation that was currently in contract with us. So we always talk about how we're going to mitigate, move forward and the rest of it, so that's a fair discussion. Action though on the other hand, it would only happen if it was appropriate.

164. Q. And was there any communication with any other potential replacement tenants?

A. Timing of that I'm not aware of, but I believe at some point there may have some — some discussion but I think it was much later in the process than the time you described, I'm not sure.

165. Q. Are you — are you talking about internal discussions or are you talking about external discussions with a third party?

A. I wasn't party to them so I don't — I -- I don't know, but I'm thinking if there was a discussion it was much later in the process than you described.

166. Q. Okay, now are you aware of whether there was any discussion with the potential replacement tenant at any point in time?

A. There may have been a question of interest.

167. Q. What does that mean?

A. It means that maybe are you interested in — in bidding again, that sort of thing.

...

170. Q. Well that's what I'm trying to ask. That's all — that's what I want to know.

A. Yeah, so there was discussion about what we were going to do next, there's no question about that.

171. Q. So did anybody ever approach a third party and ask whether there was interest?

A. I am aware that there was a discussion, I don't know what it was.

...

174. Q. And so, do you know if the discussion was all verbal or whether it was in writing or —?

A. I don't remember seeing anything in writing.

...

175. Q. Now with respect to the possibility of a replacement tenancy was there any forecasts or financial analysis done of what might be expected from a replacement tenant?

A. No.

...

182. Q. Right, so do agree with me that it addresses a situation where sales are affected by changes in government regulation?

A. When we say 'it' are we talking about the clause?

183. Q. Right, eighteen oh seven (1807).

A. And the obligations of the clause, is that what you're asking me?

184. Q. So I'm asking, the clause is there, it's engaged when sales are affected by changes and regulations that are government made?

MR. STANEK: You're asking him to interpret the clause.

MR. JONES: Well how it was interpreted, right?

A. Yeah, and we interpret it to be that, yes, we should enter in to discussion but not obligated to make a change to the terms of the agreement.

...

185. Q. Okay, so based on this way that you interpreted it is — you entered into discussions and what were the substance of those discussions?

A. Between the Peace Bridge Management and Peace Bridge Duty Free, we entered into discussions in terms of rent deferral immediately, which you were already aware of.

186. Q. Yeah.

A. And then we couldn't come to an agreement as to how we proceed, so it wasn't for some time after that that I understood that you were taking the position that that particular clause was an obligation on behalf of the Peace Bridge Authority.

187. Q. Okay. So if I can summarize what I think you told me. So eighteen oh seven (1807) leads to discussions between the Authority and Peace Bridge Duty Free, those discussions involve the initial rent deferral agreement?

A. Mmhmm, yes.

188. Q. And then there's a second rent deferral agreement offer and there's some dispute as to whether or not that was agreed to or not?

A. Right.

189. Q. But that was part of it as well?

A. The second rent deferral, okay if — I just want to make sure that I understand what you're referring to there?

...

193. Q. So my question there was, you remember I asked you about the first rent deferral agreement was part of the discussion under eighteen point oh seven (18.07) and I was asking whether this one would have — as well was part of the discussion under eighteen oh seven (1807)?

A. I think we were all looking for a path forward, so would assume that this would be discussions around the situation that we all were aware of took place, yes.

194. Q. And then there was some subsequent of — rent abatement offer that was made and that was also part of the discussion under eighteen oh seven (1807)?

A. Yeah, I mean from what I can see we were looking for a solution to an impasse, and we went from rent deferral to rent abatement, all the while arguing that full rent was due and owed, we were looking a path forward. So if — if eighteen oh seven (1807) is the only clause that refers to having those dialogues would you do it as good business partners, one or the other, we're looking for a path forward and under no obligation as I could see it from eighteen oh seven (1807) to forgive rent.

198. Q. Yeah, and so this one, my question is, so in November 20th, 2020 there's this signed — there's this offer that's been made to Duty Free, or Peace Bridge Duty Free, Peace Bridge Duty Free has signed it back and the staff was bringing it to the board for approval to sign off on, and that agreement says that all rent is going to be deferred until March 31st, that's what the email says?

A. Mmhmm.

199. Q. And help me out with what happened at that meeting because instead of rent being deferred to March 31st, there's a demand that the tenant pay a million dollars (\$1 000 000.00) within a very short period of time, even though there's no sales or revenue to pay that million dollars (\$1,000,000.00)?

A. Right.

200. Q. And all rent deferred — deferral seems to be off the table?

A. Right, right.

201. Q. So what ...

A. Yeah ...

202. Q. ... — what happened?

A. The only thing I can tell you is I think something happened between the sending of that email and the board meeting the next day that might have given — likely gave the board the sense that it wasn't being treated as other creditors are being treated and it might of had something to do with providing certain financial information to us. And I think — and then I think Karen will know more detail, but there's definitely a change between that email being sent and what occurred the next day, and that may be coincident with something that you pro — your client provided, I'm thinking that's what occurred. But again this is two year old memory, but I believe that's what occurred. I'd forgotten about the agreement so that tell you how much I remember about the situation.

...

205. Q. Would you be able to tell us what happened to cause the board to take such a one-eighty (180) position?

A. Well I could look at the minutes and figure out whether I can determine what occurred.

206. Q. Okay, if you could do that?

A. Yeah.

...

217. Q. Can you tell me whether or not in the course of the board meetings or interaction with staff from the outset of covid onward there was any specific discussion of — with respect to Section 18.07?

A. I don't recall a discussion on that topic until -- I'm not sure if it's when we saw it as a disclosure to the 2021 financials, I — I — I try to — it seems to me it was late in the process when we recognized this language was somewhat in discussion or let's say, had differences of opinion. So again, we were acting sort of in a — as we did with the other Duty Free in a way to move forward. The other Duty Free continued to stay open and continued to cooperate and pay rent, we weren't getting the same sort of support with Peace Bridge Duty Free so the task diverged.

...

231. Q. We've been provided at Tab 'C' three a copy of the executives' section minutes from April 24th, 2020 and this has to do with the first rent deferral agreement that took place. And at the — near the end of the minutes it says a discussion took place around an email that was received from Peace Bridge Duty Free that they did not feel the agreement would work for them so they asked the board consider additional offers, the board directed the general manager to advise the Peace Bridge Duty Free that although the board approved the original agreement as submitted they would be open to additional conversations as the situation develops. Do you remember anything about that conversation at the meeting?

A. Nothing more specific than what it described there.

232. Q. Okay, and was — in terms of the board being open to additional conversations as the situation developed, was the board open to a percentage rent arrangement or ...

A. That part ...

233. Q. ...there was no dis...

A. ... wasn't discussed, I think it was more about we're open to options if you've got some other thoughts, like — and that's the way I would recall that sort of situation, again remember we're one month after the store has closed, thinking you're going to reopen and just moving down a path like we did with the other folks. So nothing more than that, no — I can't say of any detail that I can recall.

238. Q. Okay, and would you agree with me that, you know, the extent of the adverse impact on the business would influence what's reasonable in terms of the level of consideration given in response to a change in regulatory rules?

A. I think in the subsequent offers made by the Peace Bridge we did recognize that there was an offer for abatement, so, you know, what you're saying I would say is fair to say.

239. Q. Yeah.

A. The level of it I guess is what you have to really determine.

...

241. Q. Like, it's reasonable that ...

A. Yeah, I don't think there was anything unreasonable about what we offered, let's put it that way.

242. Q. Okay, and so did you answer my question about ...

A. I think so. You asked about reasonableness and I told you what I thought was reasonable.

243. Q. Yeah, okay.

A. What we offered.

244. Q. Okay, fair, yeah.

A. Yeah.

245. Q. Now in terms of what happened in November and December 2020, would you say it's reasonable to go from the Authority telling — or offering the Peace Bridge Duty Free to defer rent until March 31st, 2021 and instead demand payment of a million dollars (\$1,000,000.00) by December 31st, and regular rent going forward?

A. Yeah, I think we talked about looking up the reasons to making a change to where we were in the one meeting, I can't remember the date. But certainly there was information made available to use by the Peace Bridge Duty Free that had us thinking there was an opportunity for us to receive similar recognition to some other creditors, so we thought that that was reasonable at the time. So at the time that's where we went.

246. Q. What exactly was it that ...

A. Well I think there was financials that showed cash position, that's a healthy cash position. Healthier than perhaps you recall, but in our minds healthy enough to support that sort of repayment for an obligation that I think was recognized on the year end statements, I can't remember the amount though. It might have been five million (5,000,000.00) or something, four million (4,000,000.00) or I don't remember the number.

247. Q. So you're saying that something changed from Dec ...

A. We had information.

248. Q. ... November 19th to November 20th?

A. I don't know the exact date of the information, it may have been — when was the meeting that you asked me about earlier?

MR. STANEK: November 20th.

MR. JONES:

249. Q. November 20th.

A. Yeah, okay. So then I think that you might want to check when financials were provided.

250. Q. But it — they knew that — sorry, the Authority knew that there was the store was not open and there was no sales being generated?

A. I'm just telling you why I think there may have been a change of heart, all right so that's — that's all I can tell you. We definitely knew the store wasn't open, we kept promoting that it be opened.

...

262. Q. Okay. Would you at least agree with me that it's odd or it's unusual that a landlord would propose an extension of rent deferral to March 31st of the following year and instead of proceeding with that agreement demand immediate payment?

A. And as you find things out that are different than what you understood when you made an offer, it's totally normal to change that position. I don't think that's abnormal. I mean, in a business context we were suffering as well so I don't ...

...

29. Q. Have you had any specific experience concerning duty free operators?

A. Not specifically.

30. Q. And have you ever assisted a duty free operator in negotiating their lease or advised them on their lease?

A. No.

31. Q. Have you ever acted for a bridge authority or other operator of a cross border crossing?

A. No.

32. Q. Have you done any studies of duty free stores?

A. Not that I am aware of.

33. Q. Have you ever included duty free stores in any of your other studies? For example, I believe you did a study of May this year, growth in the retail sector?

A. I don't believe that duty free was isolated.

34. Q. Did you...were duty frees even included in that study?

A. No.

35. Q. Okay. I am going to talk first about leasing rates in the Niagara region. So your opinion as to a typical leasing rate in Fort Erie is based on the comparables at Exhibit D, is that correct?

A. Yes.

36. Q. And no other comparables?

A. No.

37. Q. And with the exception of 1 which I believe is 1127 Garrison Road South, all of those comparables seem to be units in strip malls, is that accurate?

A. They could be, I can cross- reference.

38. Q. Well, can you check the pictures in Exhibit D? I believe...so it's 87 of your report.

A. Yes.

39. Q. So those appear to be units in strip malls?

A. Yes.

40. Q. Except for 1127 Garrison Road South. Do you know what that is? It looks like a restaurant.

A. It could be. We were just doing a sampling of what was available at the time of the audit, just to get a cross-reference of what was available.

41. Q. So, on page 21 of your report...

A. M'hmm.

42. Q. ...I am going to refer you to just in 6.3. And I think this rough statement is made elsewhere as well. You say,

"...Duty free stores can be desirable for retail operators. As such, the base rents are higher than comparable lease rates in the surrounding trade area. For this reason, in my opinion, it is most relevant to compare the base rent of Peace Bridge Duty Free to other duty free stores in Canada as opposed to the local trade area, as it would be expected that Fort Erie, Ontario would have generally, on average, lower retail lease rates as a ratio of gross sales compared to Peace Bridge Duty Free..."

Given that opinion, why did you proceed to do a comparison of local retail operations or retail locations in Fort Erie?

A. I don't recall which was done first, actually, in terms of forming an opinion, but I thought it was important to consider what was in the trade area, just to provide a comparison, just to have an understanding.

43. Q. But, you'll agree, it's not a good comparison?

A. It was the only comparison available.

...

51. Q. So, I am going to ask...are you aware that the rent contemplated by the lease is what Peace Bridge Duty Free offered to the Authority?

A. Yes.

52. Q. And you'll agree that the lease does not base rent on square footage?

A. Correct.

53. Q. The lease is based entirely on sales with a base and then a percentage rent?

A. Yes.

54. Q. And you are aware that the duty free has operated this location...Peace Bridge Duty Free, the corporation, has operated this location since 1986?

A. Yes.

55. Q. And you agree with me that Peace Bridge Duty Free, the corporation, is in the best position to determine what it would offer in terms of rent to secure this location?

A. I believe that is correct.

56. Q. And I am going to ask you, so given that this lease is not based on square footage or dollars per square foot, but is based on sales, is there any relevance of Schedule D in your comparison to locations based on square footage and what people are willing to pay per square foot?

A. I believe it was important to have some context in terms of what is happening in the trade area. It could have been higher, it could have been lower. It was important to us as part of our analysis.

57. Q. But, you'll agree with me, the rents in this lease is not based on square footage?

A. The rents in the lease were also negotiated some time ago, so it was important for us to understand what is happening in the market now as well.

58. Q. And I am interested in that. So, what do you understand the purpose of your report is? So, you understand that this is a case involving the interpretation of a lease?

A. M'hmm.

59. Q. So, what do you understand the information you are providing in this report...how is that going to help the judge?

A. To understand what is happening in the marketplace, what is happening in relation to the pandemic and its effect on leasing.

60. Q. **Okay. And you indicate, in page 4, that,**

"... Peace Bridge Duty Free appears to be paying the highest sales-to-rent ratio in the duty free sector..."

But you'll agree that you have no independent knowledge of what the sales-to-rent ratio being paid by other operators is, correct?

A. Well, we were provided some information from Mr. Pearce.

61. Q. **That is what we will get to. So the extent of your market data on rent paid in the duty free sector comes, as I read your report, from two sources, Mr. Pearce and a draft set of minutes from the Sault Ste. Marie Bridge Authority, is that correct?**

A. That is correct.

62. Q. **Did you have any other source of information?**

A. No.

63. Q. **And as I understand, you were unable to secure any information from other duty free operators. They wouldn't give you the information?**

A. They would not.

64. Q. **And, as I understand, the FDFA, which is an organization that represents duty free operators, indicated to you that they don't collect that information and it is not provided to them by their operators, is that correct?**

A. That is my understanding.

65. Q. Now, Mr. Pearce appears to have told you that the low end of the percentage rate rent among duty frees would be 10 to 12 percent, and the average is 14 to 16, do you recall that?

A. Yes.

66. Q. Did you ask him where he got those numbers?

A. Yes, we had a conversation and he said he was in contact with other operators because of their relationship. And so, he was aware of that, and I believe he had also been on the board as well.

67. Q. But you'll agree with me that the board, the FDFA, does not track minimum rents and that information is not shared with FDFA, correct?

A. Officially.

68. Q. Officially. So, do you believe that Mr. Pearce obtained information that was not otherwise shared with FDFA?

A. Perhaps. I have been in environments like that, that I taught colleagues to speak amongst themselves and have conversations that don't end up getting publicized.

69. Q. Did he give you any specific duty free operators and what they were paying?

A. No.

70. Q. So he just told you that the low end of the percentage rate was 10 to 12 and the average would be 14 to 16?

A. That is correct.

71. Q. So how, from that, did you get that they were paying at the top end, more than everyone else?

A. Because they were paying...we did the calculation based on what was in the lease, as well as...I mean, the lease first and foremost, and then the percentage rent that they were paying over the last period...

72. Q. So, based on that, and the information you got from Mr. Pierce, that's the only information upon which you assert that Peace Bridge Duty Free is paying the most in the market?

A. Yes.

73. Q. Okay. But, again, you'll agree that is the rent that they offered?

A. Yes.

74. Q. And when you were taking this information from Mr. Pearce, you realized that Mr. Pearce is an officer of Peace Bridge Duty Free?

A. Yes.

75. Q. And you were aware that he swore affidavits in these proceedings?

A. Yes.

76. Q. And you are aware that he is a witness in these proceedings?

A. Yes.

77. Q. And you still accepted his information as being accurate?

A. Yes.

78. Q. And you never sought to verify that information with anyone?

A. We did, but it wasn't available.

79. Q. And that is because they wouldn't share the information with you?

A. No, they are privately operated businesses.

...

114. Q. Okay. Can you explain to me how understanding what my client might expect will result from an RFP process, can assist in interpreting article 18.7 of the lease?

A. Can you rephrase that?

115. Q. So you are aware that the issue before the court is the interpretation of article 18.7 of the lease?

A. Yes.

116. Q. And article 18.07 of the lease, in general terms...I can take you to it... provides that, in the event changes in applicable laws results in a material adverse change to the business of Peace Bridge Duty Free, there will be consultation?

...

120. Q. So, how does understanding what our client, the Authority, might expect in terms of an outcome from an RFP process, assist in understanding what this clause means?

A. Well, it helps understand whether or not, if there was perhaps a negative outcome...

121. Q. Yes, go on. There was a negative outcome...

A. ...and a replacement tenant were to be required.

122. Q. So is your point that the Authority might not do as well if Peace Bridge Duty Free vacates and we have to go to another RFP, is that your point?

A. If...yes, in one way or another.

123. Q. Okay. So, in fact, on page 6, I think you say that you think,

"... Peace Bridge Authority [our client] would be better off going forward with Peace Bridge Duty Free as a tenant..."
don't you?

A. Yes.

124. Q. But, first of all, isn't that a business decision for Peace Bridge Duty Free to make?

A. Sure.

...

149. Q. In your analysis, you indicate... one of your factors is what rent the Peace Bridge Authority could expect, and you factored that into your analysis, and you say that a new lease negotiation would certainly not yield the same base rent that Peace Bridge Duty Free is paying. But, again, you have no experience in the duty free space?

A. No. I am a generalist retail expert.

150. Q. Thank you. And at the end, at the high end of your range, you say that 20 percent of gross sales is reasonable. Where did you get the 20 percent and what is the foundation for the 20 percent?

A. Based on the estimate that Peace Bridge...the current operator, was using.

151. Q. But that's what Peace Bridge Duty Free offered in its RFP?

A. Correct.

...

161. Q. So the lease was negotiated in 2016, it goes out to 2031, minimum. Okay. So tenant improvement allowances. You indicate that in your opinion, the Authority may need to offer a \$40-a-square-foot tenant improvement allowance. Are you aware of any other duty free operator who was given a tenant improvement allowance?

A. No.

162. Q. And you'll agree that, in the lease, Peace Bridge Duty Free wasn't given a tenant improvement allowance?

A. Correct.

...

166. Q. You indicate in your opinion that there would be a three-month rent free fixturing period, correct?

A. Yes.

167. Q. And you'll agree that, in the lease, Peace Bridge Duty Free wasn't given a rent free fixturing period?
- A. That is correct.
168. Q. And you'll agree that, even during the time they were required to make major renovations, they were still required to pay rent in accordance with the lease?
- A. Yes.
169. Q. Are you aware of any other duty free operator who was given a rent free fixturing period?
- ...
173. Q. Are you aware of any duty free operator who was given a rent free fixturing period ever?
- A. I am not aware.
174. Q. You also said that, in your opinion, my client would give a prospective tenant a three month rent free period so they could generate rent free income, is that correct?
- A. Can you point me to the section again?
175. Q. Hold for a second. 71 is where it starts. "Rent free period", 74. Last paragraph.
- A. M'hmm. I am just refreshing. And can you repeat your question?
176. Q. So, the first one was confirming that it was your opinion that a prospective tenant would be offered a three-month rent free period?
- A. Likely, yes.
177. Q. Are you aware that any duty free operator, at any time, was given a three-month rent free period?
- A. Not to my knowledge.
178. Q. And you'll agree that Peace Bridge Duty Free was not given a rent free period?
- A. Correct.
179. Q. You indicate in your opinion that key money would not be considered by the landlord, by my client. Did you have a discussion with my client and ask them that?
- A. I did not.
180. Q. And your opinion with respect to key money is based entirely on your general experience in retail?
- A. Correct.
181. Q. Did you reach out to any other authority to determine what they feel about, what you refer to as, "key money"?

A. Can you define "authority"?

182. Q. Bridge authority, or other operator of a cross border crossing?

A. No.

183. Q. You indicate that there will be a delay in finding a new tenant. Are you implying that the store will go dark for a period of time?

A. It could. That's what it could mean.

184. Q. Did you consider that Royal Bank of Canada has sought an order appointing a receiver, and giving the receiver the ability to operate the duty free store?

A. No, I don't believe I did.

185. Q. Did you consider that Peace Bridge Duty Free is engaged in contingency planning to mitigate against the store going dark?

A. No.

...

269. Q. Let's go on. So I just want to...so as I understand your report, and just to summarize, the just of your report is that there is risk to Peace Bridge Authority in going to another RFP, does that summarize it accurately?

A. Yes.

270. Q. And so then I'll ask...so what is to be made of that? Your opinion is, the Authority should negotiate a deal with the Peace Bridge Duty Free to let them stay? Is that what you are getting at?

A. I think it should be a consideration.

271. Q. Okay. And what about from the other side? So are you aware...actually you've seen the projections in the lease. Peace Bridge Duty Free appears to be...at least was, projecting a very large profit. Is it not incumbent on them to negotiate with the Authority to preserve the lease?

A. Sure.

272. Q. So, you believe that it is incumbent on the parties, given the risk to the Authority, to try to come to terms on a new lease?

A. Well, I think it is important...in my experience through the pandemic, landlords and tenants tried to work together to be good partners.

...

...

31. Q. Paragraph 5. You indicate in paragraph 5...can you open that up, please? That you understand that,

"...It's Peace Bridge Duty Free's position that, absent an agreement between the landlord [that is our client] and Peace Bridge Duty Free, the court will set the amount of base rent in a manner that is commercially reasonable for both parties..."

Do you see that?

A. Yes, correct.

32. Q. How did you come to that understanding?

A. That was based on a discussion with Mr. Wolf.

33. Q. So Mr. Wolf told you that?

A. Yes.

34. Q. And did he tell you that in writing?

A. No.

35. Q. Did he tell you that during the conversation you had with him on the phone?

A. Yes, this was part of the conversation we had on the phone.

36. Q. And those are the notes that you are refusing to produce?

MR. JONES: Sorry, Counsel, you have the assumption right there.

...

BY MR. SHEA:

39. Q. So, am I correct that it is your understanding that the purpose of the report was to provide the court with guidance as to the commercially reasonable amount of rent, base rent?

A. It was to provide the court with financial background that would be relevant to it if that was the approach that we are taking, yes.

40. Q. To allow the court to determine what?

A. To determine what a commercially reasonable level of rent would have been during the subject periods that I analyzed.

...

44. Q. **So you were given financial projects beyond 2023?**
- A. **I didn't rely on any financial projections. The projections that I made for fiscal 2023 were my own.**
45. Q. So, where did you get the information to make those projections?
- A. It is outlined in my report. So I have sales data at schedule 5 of the report.
46. Q. M'hmm. And where did get...that information came from?
- A. This was based on a spreadsheet containing sales and traffic count data for the first half of 2023.
47. Q. Okay. And that data came...
- A. From Jim Pearce.
48. Q. Mr. Pearce. So, Mr. Pearce never gave you projections?
- A. No, not directly.
49. Q. Indirectly, did he give you projections?
- A. There may have been something in one of the affidavits that was produced. They were quite voluminous, though, and I don't want to definitively say there wasn't anything in there, but I certainly didn't rely on any projections in looking at the 2023 likely profitability of the business.
50. Q. And you never produced any productions beyond 2023?
- A. Correct.
51. Q. **And Mr. Pierce didn't give you any projections for anything beyond 2023 directly?**
- A. **No.**
52. Q. **Now, I take it you'd agree that what rent is commercially reasonable as between two parties would generally be determined by the parties' negotiations?**
- A. **In a typical situation, yes, the parties would look at the factors when they were entering into a lease and would negotiate what they felt was reasonable.**
- ...
57. Q. Sir, in paragraph 2, you outline...of your report, this is just in the summary, I think you outlined it elsewhere as well. So you are aware that this rent in the lease is what Peace Bridge Duty Free offered the Authority?
- A. Yes.
58. Q. So, in response to the RFP, Peace Bridge Duty Free made an offer to pay rent, and this was the rent they offered to pay?

A. Yes, that is correct.

59. Q. And you are aware, are you not, that Peace Bridge Duty Free was the operator of the duty free store since 1986?

A. I believe that is correct, yes.

...

61. Q. Okay. So, you'd agree with me that, having run the store since 1986, Peace Bridge Duty Free would be in the best position to determine the rent that was commercially reasonable for it to pay?

A. I would say that Peace Bridge, when they negotiated and when they bid on the RFP when they did...again, not seeing COVID coming...yes, they would have been in a good position to understand what was a reasonable amount to pay.

62. Q. And they would be in the best position to project how much they could earn from this business and what the sales would be?

A. They would have had a decent amount of track record to make that projection, yes.

63. Q. Since 1986, yes. And do you have any information as to what Peace Bridge was paying in rent prior to this lease?

A. I believe I did and I am going to check my report. I believe it was 12 percent of gross revenue.

64. Q. And you'll agree with me that it was Peace Bridge Duty Free that agreed to significantly increase the rent that it was offering when it responded to the RFP?

A. Yes, I believe that is correct.

65. Q. And I'll refer you to paragraph 26, and I believe that you say in paragraph 26 that, "...The Authority was requesting base rent of 2.5 million a year..."

A. Yes, that was, I think, a requirement to bid on that RFP.

66. Q. And you'll agree with me that Peace Bridge Duty Free offered significantly more than 2.5 million a year?

A. Yes.

...

82. Q. So, based on these projections and these costs, total operating costs, do you have any opinion on whether the rent that Peace Bridge Duty Free offered to pay was reasonable?

A. I guess the first thing I'll point out is that...so this would have been prepared by 2016.

83. Q. M'hmm.

A. I mean, I can say that, by year three, the sales were nowhere near the 30 million dollars that is forecasted.

84. Q. M'hmm.

A. Certainly, if they are hitting those sales, then the rent is still leaving them with a nice profit.

85. Q. So you have no issue with the commercial reasonability of the rent that was offered in the lease, based on the projections that were prepared by Peace Bridge Duty Free?

A. Based on the projections, the rent would have left Peace Bridge Duty Free with a reasonable rate of return, certainly.

86. Q. And you'll agree with me that, if Peace Bridge Duty Free didn't hit these levels of sales, they wouldn't be entitled to pay less rent?

A. Less rent than what?

87. Q. Than what the lease provided for.

A. You are asking for my interpretation of the lease?

88. Q. Well, you've reviewed the lease. I am not asking for your interpretation. Do you understand that the lease provides a clause that says that, if they don't meet these levels of sales, they get a discount on the rent. Are you aware of...

A. I don't believe there is a clause that says that.

...

90. Q. And, as I understand, your report assesses what is commercial reasonable rent based on Peace Bridge Duty Free achieving a particular return on assets or particular net income percentage, is that correct?

A. It depends which period you are referring to.

91. Q. You are right. In the post-2023 and potentially beyond, do you not base your...what you believe to be commercially reasonable rent, on Peace Bridge Duty Free achieving, I believe it is, 11 point something return on assets and 6.6 net income?

A. No, that is correct. I do use those metrics to come up with what one might argue is a reasonable rate of return and the rent is sort of a plug to get to those rates of return.

92. Q. **You'll agree with me, though, that that is not in the lease?**

A. **I would agree that the lease does not outline those particular rates of return....**

...

105. Q. No. Is there a link between the obligation to pay minimum rent and the sales projection? Do you understand whether...so let me ask you this. Based on your understanding, is there a linkage between the obligation to pay rent and the sales projections?

A. There is no direct linkage or language to that effect in the lease, as far as I can tell.

...

116. Q. But, you'll agree, that, if they would have remained open, they would have had an increased ability to pay rent based on five percent traffic that was still flowing?

A. I think that is possible, but I don't know that it's, by any stretch, a certainty. Don't forget, if they are staying open, they are going to generate, let's say, five percent of their normal rent, there is the cost of sales and you've got to staff the place. You've got other costs to keep the lights on. Its difficult to say whether they would have been better off having done that.

117. Q. But you don't know? You never got the numbers?

A. It is difficult to model.

118. Q. Okay. Did you try to model that?

A. No.

119. Q. And you'll agree with me that, in paragraph 55, you say that there is no standard or definitive metric that can be applied to determine reasonable level of rent that would be applicable for the period of COVID?

A. Yes, that is correct. There is no standard or definitive metric.

120. Q. And are you aware that Peace Bridge Duty Free negotiated a rent deferral arrangement with the Authority?

A. I am aware of one such arrangement, yes.

121. Q. Did that factor into your analysis at all?

A. In what sense?

122. Q. Did you consider the fact that, as a contractual matter, the Peace Bridge Duty Free had agreed to a rent deferral as opposed to any rent abatement?

A. So it is not directly reflected in my calculations.

...

125. Q. **So what is the premise of the understanding? What do you understand 18.07 to say? What is the premise?**

A. **So, the premise or the assumption of that, the paragraph we just went through, is outlined at paragraph 5 of the report and, again, my understanding is that Peace Bridge's position is that, absent an agreement between the landlord and Peace Bridge, the court will set an amount of base rent in a manner that is commercial and made reasonable. The calculation I have described at paragraph 58 is, what, I thought, one way of looking at what a commercially reasonable amount would be.**

...

129. Q. So, your opinion is that, with sales of 16 million and assuming a return on assets of 11.6, Peace Bridge Duty Free can afford to pay 2.7 million in rent, and will realize a net income of 1.3 million for its shareholders?

A. Yes, you are reading that table correctly.

130. Q. And with the same level of sales, 16 million, and with a net income percentage of 6.6, Peace Bridge Duty Free can afford to pay 2.9 million in rent in your view, and will realize 1.05 million in net income for its shareholders?

A. Correct.

131. Q. Okay. So your analysis assumes that Peace Bridge Duty Free and its shareholders have to earn a specific return or will earn a specific return. So your analysis assumes a specific rate of return?

A. It assumes that a commercially reasonable lease, based on the circumstances known, would give the business owner a rate of return on their assets, or a level of profitability.

132. Q. And were you told by anyone that the level of profitability that Peace Bridge Duty Free expects is 11.6 return on assets or 6.6 net income percentage?

A. I wasn't told that and, in fact, based on the forecast that you provided earlier, clearly they were hoping for more. So this is meant to be more of an objective benchmark looking at other companies in this broad industry and what they are renting.

133. Q. Okay. But you agree that it would be reasonable for Peace Bridge Duty Free to accept a lower level of profitability?

A. I think there is room to maneuver around those numbers. It is not a hard and fast thing. It is a benchmark. It's an average. But certainly, the expectation of it would be this. If you are running a business, you hope to earn a profit and the return on your capital over time.

134. Q. Return on capital over the length of the lease or immediately?

A. Into the future.

...

140. Q. Okay. And I am going to assume that these were the only offers you were provided. So you were never provided with any of the other offers exchanged between the parties?

A. I believe that is correct.

...

202. Q. So, in 2022, they were looking at percentage rent of 3.2 million, which would be the greater of the amount in the offers and 20 percent of sales...so, the greater of 2.5 million and 20 percent of sales?

A. Yes. So assuming sales would have been 16 million, the 20 percent would have been higher.

203. Q. So that is the projection and they were projecting 333,000 in net income?

- A. Yes, that's correct.
204. Q. And I don't know if you have a calculator there, I could be wrong, but I calculate that as two percent.
- A. Roughly speaking?
205. Q. Roughly speaking, two percent.
- A. As a net income...well that is after tax, but yes.
206. Q. So it would more than that pre-tax?
- A. The pre-tax number would be higher.
207. Q. And when you were calculating your numbers, you were dealing with pre-tax?
- A. Pre-tax, correct.
208. Q. Okay. So the pre-tax number, then, is operating at 6.3 is what they have as operating income?
- A. Yes, operating income is 636,000 it looks like.
209. Q. So, it is probably four percent then? Using your calculation method, though, that is four percent roughly?
- A. Give or take.
210. Q. Okay. And then we go over to 2023 where they are projecting 18 million in sales. And again, we've got the percentage rent at 20 percent because in that year, again, the proposal made was three million or 20 percent. So they were projecting they would make more, so higher rent. And the income is higher, operating income of 1.162 million and net income of 747,000. So that is an increase of net income percentage almost double?
- A. Yes, a little bit less.
211. Q. Yes. So they are projecting increasing net income?
- A. Yes, that is correct.
212. Q. And that pattern continues throughout these projections, does it not?
- A. Yes, the projection assumes that sales would increase over time and, correspondingly, profitability would generally increase, with the exception of maybe one year in the middle.
213. Q. Yes, and, I believe, up until the initial term of the lease is 2031. So there is an extension. 2031 is what I refer to as, I guess, the natural expiry of the lease term. And you'll agree with me that by, that point in time, they were projecting that they would have reached on 21.09 million in sales, they would have an operating income of 2.3 million, and that is significantly higher than 6.6?

A. It's about 10 percent.

214. Q. 10 percent, yes. So they are proposing a ramp-up...they are projecting a ramp-up of their net income over time and they are also projecting an increase of the cash available in the bank, so to speak, so by the time we get to the end of the lease, there is 12.5 million in the bank, the natural term, 2021. Not going to assume an extension would be available?

A. Yes, assuming they never paid out any profits, yes...

215. Q. Yes. So, at the end...yes, you are right.

A. ...that is what the document says.

216. Q. But, they might pay out profits to the shareholders but that would be the shareholders' profit at the end, 12.5?

A. Yes.

217. Q. Okay. And you'll recall that what Peace Bridge Duty Free offered was the ramp-up in rent and that they would pay back two million dollars of the back rent over the term of the lease? Do you want to refresh your memory on that?

A. You are referring to?

218. Q. To their offer. So that would be November 16th, 2021...

A. You are correct.

219. Q. So that offer, they would ramp it up, they say out to October of 2036, and, by 2036, on this projection, they would have 21 million, 687 in the bank?

A. Yes, that is what the document says.

220. Q. So their proposal was to pay 2 million, from the 21,687,000 that they were projecting to earn, as back rent?

A. They were proposing yes, to pay it over time, in monthly installments between November 2022 and October 2036.

221. Q. So, I assume that you would agree that it would be reasonable for the shareholders to be willing to contribute money to the company to preserve or to realize this sort of projected profit?

A. What do you mean by that?

222. Q. Well, if shareholders stand to gain 21.68 million dollars over the course of the lease, and the cost of that is 2.8 million upfront, would that not be a reasonable bet?

A. Certainly, if that were to be the profitability over time, it would be, yes.

223. Q. This is the profitability they were projecting...

A. They were...although, I mean, in retrospect, the 2022 results didn't materialize.

224. Q. Okay. But this is the information that was available when those offers were made.

...

226. Q. **Are you aware of any other projections provided to the Peace Bridge Authority by the fall of 2021?**

A. No, I am not.

227. Q. **And you weren't provided with any projections that differ from these?**

A. **No, I don't believe so.**

228. Q. And you'll appreciate that these projections are significantly less than the projections in the lease?

A. I would agree with that.

229. Q. **Okay. I want to...the only other documents that I am going to introduce, and this, again, it will be for information or identification, is, I am showing you a March 13th, 2023, letter from Blaney. Have you seen that before?**

A. I don't believe so.

230. Q. **So, you did...**

A. **Sorry, do you want me to take this copy? This is the...**

231. Q. **Yes, I want that one. So you were not advised that this is the offer that Gowlings was responding to when it made its March 21, 2023 offer that you were provided with a copy of?**

A. **That is correct.**

...

233. Q. So I assume you have no particular expertise in corporate finance?

A. I mean I took courses as part of my MBA...

234. Q. Okay.

A. ...but it is not a discipline in which I work full-time.

235. Q. **Okay. Did you consider what level of debt Peace Bridge Duty Free could support based on the projections that were provided? I guess you weren't provided with any projections.**

A. **I didn't have the projections.**

236. Q. So you were not given an opportunity to...so you have no opinion on what level of debt Peace Bridge Duty Free could support, based on projections, because you weren't given any projections?

A. It would very much depend on the level of projections and what debt was already in place and other factors as well.

...

238. Q. Okay. And you weren't provided any information on the dividends that the shareholders had taken out of Peace Bridge Duty Free before that time?

A. I think I had the financial statements for the company for a couple of years before, but, no, I don't have the broader history or really any information on the financial situation of the shareholders.

239. Q. And were you aware that the shareholders...as to what capital contribution the shareholders had made to this company?

A. What do you mean by that?

240. Q. **Well, were you aware whether they put any cash into the company to buy their shares or loan the company money?**

A. **So that should be apparent in the balance sheet that I have summarized here. The common stock is \$21,000. So that would have been the initial share capital.**

241. Q. **\$21,000?**

A. **Yes.**

...

243. Q. You will agree that the projections that we looked at contemplate that...at least at 2031, that the shareholders will have realized 12.5 million in profit?

A. Yes, or I guess, more specifically, that would be the increase in cash available, yes.

244. Q. And that cash available presumably for distribution?

A. Based on this model, yes.

245. Q. And if the lease was extended to 2036, that would grow to 21 million?

A. Yes, that is what the model says.

246. Q. Okay. And since you weren't given projections, you have no opinion, I take it, on whether the shareholders should contribute money to this company to allow it to realize that, or whether it would be reasonable for them to contribute money to the company to allow them to realize that level of profit?

A. Well, I suppose the other question is, do they have the capacity to do that? And I don't know. I've analyzed the company just based on its own books and records without considering...or knowledge of the extent to which the shareholders had the ability to fund it.

...

ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

BRIEF OF EXERPTS FROM TRANSCRIPTS

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Tel: 416-862-7525

Christopher Stanek (LSO# 45127K)

Tel: 416-862-4369
christopher.stanek@gowlingwlg.com

E. Patrick Shea, KC (LSO# 39655K)

Tel: 416-369-7399
patrick.shea@gowlingwlg.com

Lawyers for Buffalo and Fort Erie
Public Bridge Authority