

**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

COMPENDIUM OF THE RESPONDENT

| | |
|---|---|
| Date: July 21 st , 2023 | BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 David T. Ullmann (LSO #42357I) Email: dullmann@blaney.com John Wolf (LSO #30165B) Email: jwolf@blaney.com Brendan Jones (LSO #56821F) Email: bjones@blaney.com Lawyers for the Respondent |
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TO: THE SERVICE LIST

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY* ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE* ACT, R.S.O. 1990, c. C.43, AS AMENDED

**SERVICE LIST
(as at November 13, 2022)**

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| AND TO: | <p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5</p> <p>David T. Ullmann (LSO #42357I) Email: dullmann@blaney.com</p> <p>John Wolf (LSO #30165B) Email: jwolf@blaney.com</p> <p>Brendan Jones (LSO #56821F) Email: bjones@blaney.com</p> <p>Alexandra Teodorescu (LSO #63889D) Email: ateodorescu@blaney.com</p> <p>Lawyers for the Respondent</p> |
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| AND TO: | <p>THORNTON GROUT FINNIGAN LLP Suite 3200, 100 Wellington Street West P.O. Box 329, West Tower Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p>Leanne Williams (LSO# 41877E) Tel: (416) 304-0060 Fax: (416) 304-1313 Email: lwilliams@tgf.ca</p> <p><i>Lawyers for the Proposed Receiver</i></p> |

| | |
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| AND TO: | PEACE BRIDGE DUTY FREE INC. 1 Peace Bridge Plaza Fort Erie, ON L2A 5N1 <i>Respondent</i> |
| AND TO: | GOWLING WLG 100 King St. W., Suite 1600 Toronto, ON M5X 1G5 Christopher Stanek Tel: (416) 862-4369 Fax: (416) 862-7661 Email: christopher.stanek@gowlingwlg.com Patrick Shea Email: patrick.shea@gowlingwlg.com <i>Lawyers for Buffalo and Fort Erie Public Bridge Authority</i> |
| AND TO: | ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON Diane Winters Tel: (647) 256-7459 Email: diane.winters@justice.gc.ca |
| AND TO: | MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 6 th Floor – 33 King Street West Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca |

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**ONTARIO
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| 2. | Disclosure Brief Index, Page 6 (PBDFMR at Tab 2B) |
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| | |
|-----|--|
| 13. | Paragraphs 61-62, Pearce November 13 th Affidavit |
| 14. | Paragraph 40 of the Affidavit of Ron Rienas sworn November 26 th , 2022 |
| 15. | Section 18.07 of the Lease |
| 16. | Undertakings chart from the examination of Tim Clutterbuck dated May 30 th , 2023 (PBDFMR at Tab 3) |

TAB 1

MR. STANEK: You can take that from the website, can't you?

A. It's all public -- public, whether it's on a website or not I'm not a hundred percent (100%) sure but basically monthly, in that window. Board meetings, regular board meetings.

MR. JONES:

93. Q. Okay, so you can provide us with that information?

MR. STANEK: There were twelve (12) each year, one each month.

MR. JONES: Okay, so then can we please have -
- I'm going to ask for unredacted versions of all the board meetings that were held between the time frame?

MR. STANEK: Regular session?

MR. JONES: Both regular and executive session.

MR. STANEK: I'm taking that under advisement because I've already given you an undertaking and now you're asking for what I've agreed to give you in unredacted form. ^

MR. JONES: All right, thank you.

MR. STANEK: All right, I've taken that under advisement.

TAB 2

2. 573/16 (23 Jun 16)

3. 869/20 (24 Apr 20)

Privileged: 933/21 (30 Apr 21), 938/21 (28 May 21) and 953/21 (2 Sept 21)

G. Authority Board Minutes

1. 23 Jun 16

2. 28 Jul 16

3. 24 Apr 20

4. 29 Jan 21

5. 25 Oct 21

Privileged: 20 Nov 20, 17 Dec 20, 30 Apr 21, 28 May 21, 8 Oct 21 and 19 Nov 21

H. Costa Meeting Notes (Undated)

I. Lease Ver 14

J. Printed from USB

1. 19 Nov 20 E-mail to Board re Rent Deferral

2. 11 Dec 20 E-mail from J Pearce

3. 31 Dec 20 E-mail to Board attaching PBDF 30 Dec 20 letter

4. 22 Jan 21 E-mail from J Pearce

TAB 3

7 July 2023

Sent by E-Mail (BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Jones:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letter of 30 June 2023. Your suggestion that the Authority is somehow not being co-operative is somewhat ironic insofar as you have not conceded on any of the issues you have raised and offered no practical solutions in terms of how to address the issues you have raised—you simply want the Authority to disclose everything you want to see.

Page 24 Answer

With respect to document relating to the US duty free, we believe that Her Honour has indicated that the relevance of this information/documentation will be determined at the up-coming attendance on 25-26 July 2023. We do not believe that the information/documentation is relevant and is properly redacted. We expect that you will file materials to establish the relevance of the information/documentation and serve the operator of the US duty free.

With respect to the e-mail between the Authority's director: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) e-mail and texts sent from or received into the directors' personal accounts are not under the control of the Authority. We question how personal e-mail exchanges between directors can be relevant to corporate decisions made by the Authority. If you wish to obtain this information, you will need to bring a Motion seeking same on notice to the individual directors.

Page 40 Answer

We will, under separate cover, provide the Minutes from the "regular" meetings held between January of 2020 and December of 2021. You will note that they are, as we previously advised, of no relevance.

With respect to the executive sessions, we have produced all of the (non-privileged) Minutes from meetings at which the Lease and accommodations requested by or offered to PBDF under Art 18.07 were addressed.

It is our position that the Minutes for the other executive sessions deal with confidential financial and other matters involving third parties, and are not relevant to the issues that will be determined by Her Honour. If PBDF insists on disclosure of these Minutes, it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Privilege is claimed over the identified Minutes for the following reasons:

30 Apr 2021—The Minutes approve legal questions to be put to Gowling based on Report 933/21. The legal questions and the answers are redacted from Report 938/21. There are no direct references to Art 18.07 in the Minutes. We will produce these Minutes if you will agree that by producing the Minutes the Authority is not waiving privilege over the questions posed to Gowling and the answers provided.

28 May, 8 Oct and 19 Nov 2021—The Authority's lawyers were present at the Meeting and the Minutes refer to the legal advice provided by Gowling.

If PBDF insists on disclosure of these Minutes it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Page 55 Answer

We will, under separate cover, provide agendas for the “regular” meetings between January of 2020 and December of 2021, and agendas that were prepared for executive sessions for which Minutes have been provided. If PBDF insists on disclosure of the agendas from the other executive sessions, it will have to bring a Motion on 25-26 July 2023. As noted above, it is our position that the other executive sessions deal with confidential financial and other matters involving third parties, and are not relevant to the issues that will be determined by Her Honour. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

We note that “stand alone” Minutes from 2021 approving an amendment to a pension plan (20 January 2021) and a contract for work undertaken on the Peace Bridge (6 July 2021) are not included. These Minutes are not relevant to the issues to be determined by Her Honour and refer to sensitive information. If PBDF insists on disclosure of these Minutes, it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Page 58 Answer

Any paper notes would have reflect only to who proposed and seconded motions. Any paper notes are destroyed once the Minutes for the meeting are approved.

Page 66 Answer

Attached are the agendas for the meetings held on 23 June 2016.

With respect to not leading or relying on evidence, we will rely on whatever evidence is in the Record, including the Affidavits sworn by Mr. Rienas. Your client is free to cross-examine Mr. Rienas on the factors considered by the Authority, whether the minimum rent offered by the potential tenants was a factor and, if so, how significant a factor it was in the Authority's decision to select PBDF. You could even ask him, should you wish, the delta between what PBDF offered in terms of minimum rent and the next-highest proposal. It is not necessary for the full economics of the other proposals made in response to the RFP to be produced for such questions to be asked. Nor are the full economics of the other proposal relevant to the interpretation of Art 18.07.

We note that we have proposed a solution that would allow your client to see the full economics of the various proposals as the "scoring" while ensuring the fairness of any future RFP. You have rejected that proposal, but not provided any alternative means of ensuring the fairness of any future RFP.

Page 71 Answer

There were no written communications. Mr. Rienas reached out to the IGL Duty Free via telephone once to see if there was interest in operating the duty free should the opportunity arise. There are no notes from that conversation. There was no further outreach to IGL Duty Free.

Page 87 Answer—Recordings

There is no recording device per se. The recordings were taken via a function available to record "to the cloud" audio only during on-line meetings.

There were no specific instructions given to delete the recordings. All recordings are deleted by Authority staff as a matter of practice after the Minutes of the meeting are approved. This policy ensures that there is only one official record of what was determined at a meeting—the approved Minutes for that meeting.

No steps have been taken to recover deleted recordings. It is the Authority's understanding that recordings were stored "in the cloud" and can no longer be recovered after 30 days of being deleted.

Page 87—Minutes

You have been provided the Minutes. Can you please explain what specifically you are now requesting and why? Should you wish to have a determination as to whether, in releasing the Minutes, the Authority has somehow waived privilege, you are free to seek such a determination on 25-26 July 2023.

Page 101 Answer

Mr. Clutterbuck reviewed no documents in responding to his undertaking other than those attached to his response to undertakings. As far Mr. Clutterbuck recalls, the 20 November 2020 communication from Mr. Rienas to PBDF attached to his response reflects the verbal instructions given to Mr. Rienas by the Board.

We assume that there is no dispute that, even assuming the Second Rent Deferral was enforceable against the Authority: (a) the agreement contemplated a deferral of rent and not an abatement; (b) PBDF had the *de facto* advantage of the deferral contemplated by the agreement; (c) the contemplated deferral period has expired; and (d) PBDF has not made any of the arrears payments contemplated by the agreement.

Report 869/20

As noted above, Her Honour has indicated that the relevance of this information would be determined at the up-coming attendance. We expect that you will file materials to establish the relevance of the information and serve the operator of the US duty free. We do not believe that the relevance of the information you are seeking has ever been “recognized”.

Conditions for Disclosure

Contrary to your assertion, we are not imposing conditions on disclosure. There are legitimate issues as to whether the confidential information your client is seeking is relevant and, if so, whether it should be sealed or disclosed based on conditions. We are attempting to work out an arrangement that would permit your client to see that information. You are clearly not interested in any sort of negotiated resolution and we will seek an order determining the relevance of the information and, if necessary, an order sealing the information and/or limiting disclosure to protect the integrity of any future RPF process.

Our Letters/Additional Disclosure

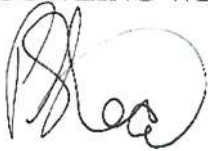
You don't seem to appreciate the irony of demanding disclosure of every document you want to see while, at the same time, expecting the Authority to take your client's word that it has produced everything that is relevant, particularly in the face of disclosure on the part of PBDF that appears at least to be deficient. The very fact that there are in excess of 6,800—the 6,800 e-mails referenced in your letter were recovered from only one e-mail account—e-mails that were not reviewed calls into question the quality of your client's disclosure.

We appreciate that the questions that we posed are “premature” cross-examination, but we had hoped PBDF would co-operate in order to make the cross-examination of Mr. Pearce more efficient. In reply to the specific matter addressed in your letter with respect to the distributions made to PBDF's shareholders, we had hoped that it would be more efficient to have your client

answer what should be a very simply question rather than force the Authority to put to Mr. Pearce multiple audited financial statements to have them introduced as exhibits and then refer to the distribution(s) to shareholders referenced in each. To the extent that Mr. Pearce is not aware of the total amount distributed to each of the shareholders during the identified period(s), can you please ensure that he informs himself of this information so that he is prepared to answer the question when he is cross-examined?

Sincerely,

GOWLING WLG (CANADA) LLP



E. Patrick Shea, MStJ, KC, LSM

EPS:jm

Encl.

cc. Christopher Stanek

57484500\1

TAB 4

typically not without him being fully aware of it, it might have been for a detail that perhaps would be better known by the finance person, so I'm not aware of anything that -- that hap -- transpired, I'm not saying it didn't happen, but it would be more clarification certainly, no direction.

67. Q. Okay.

MR. JONES: So Counsel, I'm going to request an undertaking for copies of any emails or text messages or other written communication between the board members and operational staff between that time period from January 2020 to December 2021 that relates to the Duty Free stores tenancies, both on the Canadian side and on the American side.

MR. STANEK: Why?

MR. JONES: What do you mean why?

MR. STANEK: Why do you want it?

MR. JONES: Well because it's relevant to ...

MR. STANEK: Why?

MR. JONES: ... the issue before the court.

MR. STANEK: Well why is it relevant to the issue before the court?

MR. JONES: Well the issue before the court is with respect to how the Authority managed the

covid pandemic and specifically with respect to issues involving the Peace Bridge Duty Free lease and the operation of eighteen oh seven (1807) of that lease, and to the extent that issues about the lease are being discussed during the covid pandemic, that's why it'll be relevant.

MR. STANEK: You're asking us to search all communications between all board members and all staff members for a two year period because you say it somehow relates to how the -- how they managed covid, not your lease, to how it man -- how they managed covid, have I got that right?

MR. JONES: No, no I'm talking about emails and texts about this lease, the two leases.

MR. STANEK: Okay. They weren't sent to your client, so there's no -- you're not asking for communications to and from your client, you're talking about all -- all completely internal communications for two years concerning the lease?

MR. JONES: Correct.

MR. STANEK: Okay, I'm going to take that under advisement because I think that that is overly broad. Yeah, okay, that's what I've

said. ^

MR. JONES: I mean it doesn't sound like it would have been an extraordinary amount of communication, it would have been dealing with ...

MR. STANEK: He has already told you that all the -- all business was conducted at board meetings, so I'm not sure why you think this is relevant.

MR. JONES: Right, and it's clarifying what issues were going to be addressed.

MR. STANEK: Mmhmm.

MR. JONES: And -- and that type of thing, or what the meaning of certain things were.

MR. STANEK: Mmhmm.

MR. JONES: So that I think puts it squarely in the -- in the scope of relevance.

MR. STANEK: Mmhmm.

MR. JONES:

68. Q. Okay, and I take it directions would be given from the board to the operational staff by way of resolution, is that right?

A. Yeah, motions.

69. Q. Motions and resolution?

A. Mmhmm.

TAB 5

any circumstance in which the Authority has thought -- has sought approval from the government?

A. No. Is that fair, okay.

MR. JONES:

62. Q. Now earlier you told me that either the chair or the vice chair might speak directly to the general manager and have communications I take it about operational issues with the Authority, is that what they would be ...

A. Things of that nature, yeah.

63. Q. Okay. And would they be -- include the leases or the tenancies for the Duty Free stores?

A. The issues associated with deciding on significant matters are all handled by the board. So discussions that might take place outside of that might be -- might be about timing of what we put on the agenda for the next meeting, whether we get council to support that discussion, those types of discussions occur around bigger issues like that. If we're talking about staffing at the border that might be something we can give advice on but not direction. There's no direction given outside -- outside the border so we -- we manage that way.

64. Q. Right. So it sounds like you'd be

communicating about what is going to be dealt with

...

A. Yeah.

65. Q. ... inside the meeting?

5 A. Yeah, and we might write recommendations about when it's a good time to get an opinion and things of that nature. So it's -- it might be a little bit more advisory but also support, but in fact it's -- there's no decisions made that aren't board approved.

10 66. Q. Okay. Now would -- during the covid pandemic from January 2020 until December 2021 would you have had any direct communications by email or text message or anything of that nature with the --
15 with the staff relating to the Duty Free store leases?

20 A. I don't recall anything in that period for -- so the year of '20 I wasn't the chair I was the vice chair, but I don't recall any specific discussions that would have been anything other than clarification. It might have been -- help me understand what's in this document that I'm reading, that sort of thing I think is fair game, but other than that and -- and I'm trying to think if there was
25 ever a time we may gone beyond the general manager,

said. ^

MR. JONES: I mean it doesn't sound like it would have been an extraordinary amount of communication, it would have been dealing with ...

MR. STANEK: He has already told you that all the -- all business was conducted at board meetings, so I'm not sure why you think this is relevant.

MR. JONES: Right, and it's clarifying what issues were going to be addressed.

MR. STANEK: Mmhmm.

MR. JONES: And -- and that type of thing, or what the meaning of certain things were.

MR. STANEK: Mmhmm.

MR. JONES: So that I think puts it squarely in the -- in the scope of relevance.

MR. STANEK: Mmhmm.

MR. JONES:

68. Q. Okay, and I take it directions would be given from the board to the operational staff by way of resolution, is that right?

A. Yeah, motions.

69. Q. Motions and resolution?

A. Mmhmm.

TAB 6

that process took place with, I think there was a modest rent relief. But please look at the details.

108. Q. Okay.

A. My memory's not clear on that.

5 109. Q. Okay, fair enough.

MR. JONES: So can we also just to put it in context, can we have an undertaking for a copy of that lease as well?

10 MR. STANEK: It occurs to me that because there is another party to both the agreement and the lease that we may have to investigate as to whether it can be disclosed.

MR. JONES: Yeah, I mean if there needs to be a sealing order or something like that.

15 MR. STANEK: Okay, so the — the undertaking I gave you with respect to the — to the agreement, same thing with respect to the lease, I recognize the relevance of it, however there may be a restriction as to our ability to
20 provide it. And I need to — we will need to investigate that, but I will also undertake to advise as to what can be — what details of these arrangements, the lease and the agreement can be produced if any, okay? ^

25 A. I — I think I should mention 'cause you

relevant document which you acknowledged earlier
and so ...

MR. STANEK: Yeah, no ...

MR. JONES: ... that's why we're asking for
it.

MR. STANEK: ... it's not about relevance. But
what I'm telling you is one of the parties to
that document does not have representation at
this table.

MR. JONES: Counsel, the case law ...

MR. STANEK: And I can't speak -- I can't
speak for them.

MR. JONES: Counsel, the case law on this is
pretty clear that if there needs to be a sealing
order that can be dealt with, but if it's a
relevant document it's got to be produced.

MR. STANEK: I'll find out why it's redacted. ^

MR. JONES:

131. Q. Okay, so just going back to the board
meeting, would there also be an agenda for each of
the board meetings.

A. Yes.

MR. JONES: Okay, so Counsel, I would like the
agenda for each of those board meeting between
the time period we're talking about.

TAB 7

23 June 2023

Sent by E-Mail (Dullmann@blaney.com
BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

David T. Ullmann
Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Sirs:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

On 16 June 2023, Her Honour directed that the Authority provide any further productions and disclosures by 23 June 2023.

I. Refusals on Rule 39.03 Examinations

Karen Costa

The only refusal from the Rule 39.3 examination of Ms Costa was to produce a copy of the second-place response to the RFP. The Authority will not produce that document. It is the Authority's position that it is not relevant to the issues that are before the Court and that issue will be resolved at the hearing on 25 and 26 July 2023. The second-place proposal does not includes reference to any rent deferral(s) or abatement(s) in the event that there is a change in legislation has an impact on the duty free store. Indeed, PBDF's own proposal included no request that such a provision be included in any lease between PBDF and the Authority. That request was made by PBDF after it was selected.

Tim Clutterbuck

The following are additional answer to undertaking and refusals given by Mr. Clutterbuck:

| Undertaking | Page | Answer |
|--|------|--|
| To provide copies of any emails, text messages or other written communication between the board members and operational staff between January 2020 and December 2021 that relates to the Duty Free stores tenancies, both on | 24 | <p>The Authority believes that this request raises issues of proportionality. During 2020 and 2021 there were 12 individuals who held office as Directors, two of who are no longer serving as Directors. The Authority currently has over 80 employees.</p> <p>The only employees with whom Directors would have communicated involving operational issues are Mr. Rienas and Ms. Costa. Mr. Rienas is the General Manager. Ms. Costa is the CFO.</p> |

| Undertaking | Page | Answer |
|---|------|---|
| the Canadian side and on the American side. | | Ms Costa and Mr. Rienas undertook searches of their current and archived e-mails from 2020 and 2021. These searches would have captured any e-mails received from the Directors. Aside from a generalized searches for e-mails relating to PBDF, specific searches were conducted using the following terms: “abatement”, “deferral” and “18.07”. If you wish to have any other (reasonable) word-specific searches conducted by Ms Costa or Mr. Rienas of their e-mails, we would be please to consider such a request. |
| To advise if there were brackets provided to staff with respect to what would be acceptable for the RFP process in 2016. | 27 | <p>The Authority engaged a fairness monitor/consultant to provide professional advice on the operation of the RFP process and to assist in the evaluation of the proposals submitted in response to the RFP. The consultant would have advised the Authority on the fairness of the RFP process. The consultant was not involved in the negotiation of the Lease or the drafting of Art 18.07.</p> <p>In addition, PBDF raised a legal issue with the right of the Authority to conduct the RFP and argued that the Authority was required to negotiate a lease with PBDF and could not issue an RFP. The Authority sought and obtained legal advice on that issue.</p> |
| To provide all reports and briefing notes that led to rent relief offers from the Authority to Duty Free. | 37 | See below. |
| To provide all the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021. | 40 | There were 39 meetings of the Authority’s Board—22 regular meetings and 17 executive sessions—between January of 2020 and December of 2021. The Minutes of all meetings at which (a) Art 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 were addressed have been produced. |
| To provide the unredacted version of the reports listed in the disclosure brief as privileged or advise what has been redacted and why, who authored the reports and who they were directed to. | 65 | See below. |
| To provide copies of video board meetings held over the internet. | 87 | Mr. Clutterbuck was referring to two separate matters: (a) use of Zoom for meetings; and (b) audio recordings. Zoom was used for meetings, but there were no Zoom recordings taken. The only recordings were audio and they were dealt with as per the responses to undertakings. |

II. Reports 554/16, 573/16 and 869/20

We understand that you are taking the position that your client is entitled to an unredacted version of Reports 573/16 and 869/20, which Report have been provided redacted.

Report 554/16

Report 554/16 relates to the process the led up to the RFP. The redacted portion of the Report relays legal advice provided by Gowling.

Report 573/16

Report 573/16 deals with the approval by the Authority of PBDF's proposal submitted in response to the RFP. It is relevant only insofar as it recommends the approval of a lease with PBDF. At the time the Report was prepared, Art 18.07 was not anticipated, at least by the Authority and there is no reference in the Report to Art 18.07 or the issue(s) addressed by Art 18.07.

The parts of the Report that are redacted detail and compare the various proposals submitted in response to the RFP. We believe that test applicable to sealing records as set out in *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) can be satisfied in connection with this information. We note that PBDF itself recognized the confidential nature of the proposal-related information that the Authority has redacted. PBDF's own proposal included the following:

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Fee Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

We have no issue providing PBDF with the unredacted version of Report 573/16 on the basis that: (a) PBDF will sign an appropriate confidentiality/non-disclosure agreement; and (b) PBDF, including the officers, directors and shareholders, agree that they will not participate in a future RFP should the Lease be terminated.

Report 869/20

Report 869/20 deals with approval of the rent deferral agreements entered into with PBDF and the operator of the US duty free.

The redactions in the Report relate to: (a) the finances of the operator of the US duty free; and (b) the specific agreement that was entered into between the Authority and the operator of the US duty free. We believe that test applicable to sealing records as set out in *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) can be satisfied in connection with this information. We note that the financial information that has been redacted is of the same type as the information concerning PBDF's finances that has been sealed.

We further note that the specific agreement between the US operator and the Authority is not relevant to the issue to be determined by the Court.

However, the foregoing notwithstanding, the Authority has no issue providing PBDF with an unredacted copy of Report 869/20 provided that it does not become part of the Court's file and no specific reference(s) to the economics of the US operator's business will be made in any materials filed by PBDF, but the terms of the rent deferral given to the US operator can be referenced.

III. Reports 933/21, 938/21 and 953/21

The Authority claims litigation and/or solicitor-and-client privilege over Reports 933/21, 938/21 and 953/21, but is, as previously indicated, is prepared to provide redacted copies of the Reports on the basis that in doing so no privilege is being waived.

The redactions in the attached Reports 933/21, 938/21 and 953/21 are:

Report 933/21

Page 1—Relays legal advice from Gowling.

Page 2—Relays steps taken by the Board based on legal advice from Gowling.

Page 3—Relays legal advice.

Attachment—E-mail from Gowling to Authority providing legal advice.

Report 938/21

Page 1—Relays legal advice from Gowling.

Attachment A—E-mail from Gowling to Authority providing legal advice.

Report 953/21

Page 2—Relays legal advice from Gowling.

Reports 933/21 and 938/21 are deleted for the sake of convenience, but they are otherwise provided in redacted form.

IV. Solicitor-and-client Communications

A list of e-mails from the relevant time periods that would have been disclosed were it not for the fact that the Authority is claiming solicitor-and-client privilege is attached.

Sincerely,

GOWLING WLG (CANADA) LLP



E. Patrick Shea, MStJ, LSM, CS

EPS:jm

Encl.

cc. Christopher Stanek

57288767\1

TAB 8

Ariyana Botejue

THIS IS EXHIBIT # 2
ON THE EXAMINATION OF:

From: Karen L. Costa
Sent: April 27, 2021 3:09 PM
To: Kristina Carroll; Nancy C. Teal
Cc: Karen L. Costa; Mark DeVreede
Subject: PBDF
Attachments: PBDF - Payments Received.xlsx; PBDF Deferred Rent Balances.xlsx; 20210413 140732.pdf; DFA 2020 rent due.xlsx; WDF Deferred Rent Balances.xlsx

KAREN COSTA IN

RRC

vs.

PEACE BRIDGE DUEY FINE

HELD ON MAY 30 2023

Larry Southwell
OFFICIAL EXAMINER
at St. Catharines, Ontario

Hi –

Can we meet to discuss PBDF tomorrow. Ron needs a report to the board for this week's meeting that I need to have completed by tomorrow end of day.

I need the attached filled out for both US and PBDF each month and every time we receive funds.

Please see the attached letter - as for the \$58,053.31 payment received from PBDF – We are drawing the \$50,000 letter of credit and need to apply that to the outstanding rent. Then \$50,000 of the amount just paid is to be recorded as replenishment of the security deposit and the remaining \$8,053.31 is to be applied to rent. I want the entries to reflect that is what we did.

Both entities are in default of the rent deferral agreements.

Thanks!

Karen

Karen L. Costa, CPA
Chief Financial Officer
Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
klc@peacebridge.com | T 905-994-3679 | T 716-884-8638 | F 905-871-9940 | F 716-883-7246

For up to the hour traffic conditions, visit mobile.peacebridge.com

This communication is intended solely for the addressee(s) and contains information that is privileged, confidential, and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. If received in error, please notify us immediately by return e-mail.

Peace Bridge Authority
Analysis of Revenue - World Duty Free
12/31/2020 - REVISED (Karen)

| | Calculated Rent | | | Sales | | | | 2020 Budgeted Sales |
|----------------------------|-----------------|-------------|--------------|-------------------------|---------------------|----------------|--------|------------------------|
| | Base | Amount paid | 2020 owing | 2019 Certified Sales | 2020 Gross Sales | Difference | % | |
| 1/20 | 100,382.88 | 109,714.52 | 210,097.40 | 459,453.54 | 508,857.00 | 49,403.46 | 10.7% | 464,049 |
| Jan. Rent Adj. | | | - | | (109.20) | (109.20) | | |
| Jan. Sales Adj. | | | - | | 600,740.00 | 17,569.10 | 2.9% | 589,003 |
| 2/20 | 100,382.88 | 109,714.52 | 210,097.40 | 583,170.90 | 600,740.00 | 17,569.10 | 2.9% | 589,003 |
| Feb. Sales Adj. | | | - | | (451.50) | (451.50) | | |
| 3/20 | 100,382.88 | 81,719.60 | 182,102.48 | 996,742.25 | 583,583.41 | (413,158.84) | -40.8% | 1,006,709 |
| Mar. Sales Adj. | | | - | | 6,360.59 | 6,360.59 | | |
| 4/20 | 100,382.88 | 19,545.64 | 80,837.24 | 948,615.71 | 122,170.00 | (826,445.71) | -87.1% | 958,102 |
| 5/20 | 100,382.88 | 21,601.55 | 78,781.33 | 970,041.60 | 135,026.00 | (835,015.60) | -86.1% | 100,383 |
| 6/20 | 100,382.88 | 30,926.35 | 69,456.53 | 1,351,508.84 | 193,290.00 | (1,158,218.84) | -85.7% | 100,383 |
| 7/20 | 100,382.88 | 26,918.84 | 73,464.04 | 1,296,249.91 | 168,249.00 | (1,128,000.91) | -87.0% | 100,383 |
| 8/20 | 100,382.88 | 27,101.86 | 73,281.02 | 1,364,491.72 | 169,387.00 | (1,195,104.72) | -87.6% | 100,383 |
| Mar. thru Aug. Sales Adj. | | | - | | (302.60) | (302.60) | | |
| 9/20 | 100,382.88 | 34,349.09 | 66,033.79 | 1,135,750.67 | 214,682.00 | (921,068.67) | -81.1% | 100,383 |
| 10/20 | 100,382.88 | 28,242.19 | 72,140.69 | 879,060.17 | 176,514.00 | (702,546.17) | -79.9% | 100,383 |
| 11/20 | 100,382.88 | 31,451.62 | 68,931.26 | 776,500.38 | 184,799.00 | (591,701.38) | -76.2% | 100,383 |
| 12/20 | 100,382.88 | 49,450.52 | 50,932.36 | 1,075,170.48 | 260,266.00 | (814,904.48) | -75.8% | 100,383 |
| Sept. thru Dec. Sales Adj. | | | - | | (0.89) | (0.89) | | |
| Totals | 1,204,594.56 | 570,736.30 | 1,236,155.54 | 11,836,756.17 | 3,323,059.81 | (8,513,696.36) | -71.9% | -13.0% |
| | | 1-12211 | 1-51031 | | | | | |
| Total Rec. | | 570,736.30 | 1,236,155.54 | | | | | |
| Per G/L | | 0.00 | 1,204,594.56 | | | | | |
| Difference | | 570,736.30 | -31,560.98 | | | | | |

Additional rent is based upon gross sales levels, less the base rent:

| | | |
|------|-------------------|----------------------|
| 0.16 | first \$3,000,000 | \$ 480,000.00 |
| 0.19 | next \$3,000,000 | 61,381.36 |
| 0.21 | next \$2,000,000 | |
| 0.24 | next \$2,000,000 | |
| 0.25 | thereafter | |
| | | <u>\$ 541,381.36</u> |

Crisis months Additional rent.
Apr = June sales 450,486.00
\$ 72,077.76

TAB 9

| THRP Subsidy program | Period 22 Nov20 2021 | Period 23 Dec18 2021 | Period 24 Jan15 2022 | Period 25 Feb12 2022 | PP26 Mar12 2022 | PP27 Apr9 2022 | PP28 May7 2022 086 |
|---------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|--------------------|-------------------|--------------------------|
| Maximum claim amount | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 |
| THRP Subsidy rate | 71.8% | 61.8% | 61.3% | 75.0% | 75.0% | 27.65% | 23.15% |
| THRP Subsidy | 53,850 | 46,350 | 45,975 | 56,250 | 56,250 | 20,738 | 17,362.50 |
| Lockdown support | 18,750 | 18,750 | 18,750 | 18,750 | - | - | - |
| Total THRP Subsidy received | 72,600 | 65,100 | 64,725 | 75,000 | 56,250 | 20,738 | 17,362.50 |
| PBDF | | | | | | | |
| PBDF Revenues | 432,391 | 565,466 | 416,763 | 238,878 | 442,366 | 542,511 | 739,975 |
| Percentage rent paid-20% | 86,478 | 113,093 | 83,353 | 47,776 | 88,473 | 108,502 | 147,995 |
| Additional Rent-Taxes&Insurance | 10,812 | 10,812 | 10,812 | 10,812 | 10,812 | 10,812 | 10,812 |
| Total Rent paid to PBA | 97,291 | 123,906 | 94,165 | 58,588 | 99,286 | 119,314 | 158,807 |
| Net balance | (24,691) | (58,806) | (29,440) | 16,412 | (43,036) | (98,577) | (141,445) |
| Net balance paid to PBA | 0 | 0 | 0 | 16,412 | 0 | 0 | 0 |

| CERS Subsidy Program | Period 1 Oct24 2020 | Period 2 Nov21 2020 | Period 3 Dec19 2020 | Period 4(11) Jan16 2021 | Period 5(12) Feb13 2021 | Period 6(13) Mar13 2021 | Period 7(14) Apr10 2021 |
|---------------------------------|------------------------|------------------------|------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| PBDF store max | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 |
| CERS Subsidy Rate | 65% | 65% | 65% | 65% | 65% | 65% | 65% |
| | 48,750 | 48,750 | 48,750 | 48,750 | 48,750 | 48,750 | 48,750 |
| Lockdown support | - | 18,750 | 18,750 | 18,750 | 18,750 | - | - |
| Total CERS received | 48,750 | 67,500 | 67,500 | 67,500 | 67,500 | 48,750 | 48,750 |
| Previously paid to PBA | | | | | | | |
| Additional Rent-Taxes&Insurance | (8,167) | (8,167) | (8,167) | (8,167) | (9,050) | (9,050) | (9,050) |
| Net balance | 40,583 | 59,333 | 59,333 | 59,333 | 58,450 | 39,700 | 39,700 |
| Remitted to PBA | 43,442 | 59,333 | 58,053 | 59,333 | 58,450 | 39,700 | 39,700 |

| CERS Subsidy Program | Period 8(15) May8 2021 | Period 9(16) Jun5 2021 | Period 10(17) Jul3 2021 | Period 11(18) Jul31 2021 | Period 12(19) Aug28 2021 | Period 13(20) Sep25 2021 | Period 14(21) Oct23 2021 |
|---------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| PBDF store max | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 |
| CERS Subsidy Rate | 65% | 65% | 65% | 60% | 40% | 40% | 20% |
| | 48,750 | 48,750 | 48,750 | 45,000 | 30,000 | 30,000 | 15,000 |
| Lockdown support | - | - | - | - | - | - | - |
| Total CERS received | 48,750 | 48,750 | 48,750 | 45,000 | 30,000 | 30,000 | 15,000 |
| Previously paid to PBA | | | | | | | |
| Additional Rent-Taxes&Insurance | (10,812) | (10,812) | (10,812) | (10,812) | (10,812) | (10,812) | (10,812) |
| Net balance | 37,938 | 37,938 | 37,938 | 34,188 | 19,188 | 19,188 | 4,188 |
| Remitted to PBA | 37,938 | 37,938 | 37,938 | 34,188 | 19,188 | 19,188 | 4,188 |

TAB 10

51. Greg O'Hara, President, the only shareholder of Duty Free that receives a salary, has deferred his annual salary of \$60,000 per annum to date in its entirety.

Duty Free's payment of rent

52. Throughout the Covid-19 pandemic, Duty Free has paid all Additional Rent to the Authority, in the sum of approximately \$10,800 per month, including during the Closure Period.

53. Base Rent payable under the Lease is by a formula predicated upon twenty percent (20%) of Duty Free's Gross Sales, being the minimum gross sales anticipated at the time of entering into the Lease, together with a minimum rent of \$4 million per annum paid monthly (subject to a calculation set out in subsection 4.03 of the Lease).

54. Since reopening its retail store, Duty Free has in good faith paid to the Authority Additional Rent and the greater of all Covid-related rent assistance it was eligible for and received or 20% of its monthly Gross Sales ("**Normal Rent**"). In addition, at the demand of the Authority in or about July 2022, Duty Free has paid HST on 100% of Base Rent, \$43,000 per month from April 2020, resulting in an HST overpayment, and Duty Free continues to pay HST on 100% of Base Rent at the Authority's request.

Attached hereto and marked as **Exhibit "F"** is a summary of the HST remittance reconciliation for from April 2020 to June 2022.

55. The Authority has accepted all payments from Duty Free, including Normal Rent.

56. Duty Free had been paying the 20% of Gross Sales on or around the tenth day of each month after completing its accounting of Gross Sales for each month, which it delivered to the Authority in accordance with subsection 5.01 of the Lease. In response to a request from the

TAB 11

video conference. But so yeah, that would have been on the agenda, it would have been, as I had stated before, there were other recommendations that come before us we discuss them and take a course of action.

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.

203. Q. A lot has happened ...

A. Yeah.

204. Q. ... in the mean time.

A. Yeah.

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

TAB 12



At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
November 20, 2020

1. CALL TO ORDER

The Chairman called Executive Session to order at 9:02 AM.

2. ROLL CALL

Present

K. Manning, Chair
T. Clutterbuck
M.T. Dominguez
L. Holloway
T. Masiello
I. Meharry
J. Persico
P. Robson
M. Russo

Absent

D. Zimmerman (*with regrets*)

Staff Present

R. Rienas, General Manager
K. Costa, Chief Financial Officer
T. Boyle, Chief Operating Officer
K. Kaiser, Executive Assistant

Others Present

F. Cirillo – NYS Department of Transportation

3. CONFLICTS OF INTEREST

None

4. NEW BUSINESS

- a) Peace Bridge Duty Free Rent Deferral Agreement – Verbal
Moved by K. Manning
Seconded by T. Clutterbuck

"THAT the rent deferral agreement with Peace Bridge Duty Free be approved."

CARRIED

A discussion took place around the need to extend the deferral agreement executed in April due to the ongoing pandemic and continuing border restrictions.

5. RETURN TO REGULAR SESSION

Moved by P. Robson
Seconded by T. Masiello

"THAT the meeting return to regular session."

CARRIED

Ron Rienas,
General Manager

TAB 13

61. I note that paragraph 27 of Ron Rienas' September 7th, 2022 affidavit states that from July 31st, 2020 onward, the Authority was aware of and operating within the context of the eviction moratorium. As such, the Authority was aware it would be unlawful to terminate the Lease when it elected to wrongfully threaten eviction for non-payment of rent, both on September 8th, 2021 and November 21st, 2021, as noted below.

62. Despite the Authority's knowledge of the eviction moratorium making it unlawful to terminate the Lease, the acknowledgment by the Authority's lawyer of the eviction moratorium (September 17th, 2021 letter at Exhibit "E" of my December 12th, 2021 affidavit), the Authority's counsel advised RBC's lawyer that the Authority intended to exercise its remedies under the default provisions of the Lease (ie. terminate the Lease anyway) during the non-enforcement period, without regard to the eviction moratorium.

Attached hereto and marked as **Exhibit "G"** is a copy of Chris Stanek's November 21st, 2021 email that is also referred to in paragraph 65 of my December 12th, 2021 affidavit

63. The Authority's actions directly led to this receivership application and in due course RBC demanding increased security from Duty Free. As a result of the receivership application, Duty Free has granted RBC additional security in the form of \$850,000 collateral cash, and has also duly maintained the thresholds set out in the Appointment Order as amended (defined below).

64. In response to paragraph 38 of Ron Rienas' affidavit alleging Duty Free has not provided financial information in accordance with Article V of the Lease, Article V of the Lease requires Duty Free to furnish two things to the Authority: monthly statements of Gross Sales by the tenth day of each month (subsection 5.01), which Duty Free has done; and annual statements within 45 days (subsection 5.02) – Duty Free has delivered its 2021 audited financial statements to the

TAB 14

information as to the net personal wealth of the shareholders of PBDF or indicate why they will not provide financial support to PBDF.

I. The Authority is not an “Outlier”

37. Any assertion that the Authority is an “outlier” in terms of what it has offered to PBDF is not correct. What the Authority has offered to PBDF appears to be more than reasonable having regard to what other international bridge authorities have offered to their duty free tenants.
38. I have confirmed with that Niagara Falls Commission that the operators of the duty frees at the Rainbow Bridge and the Leiston Bridge paid less than the minimum rent required by the applicable leases during COVID, but they were not given a rent abatement and have agreed to pay over time 100% of the rent that they were unable to pay during COVID plus interest.
39. PBDF relies on the assertion that the Sault Ste Marie Bridge Authority (the “**SSM Authority**”) provided a rent abatement to the duty free store at the Sault Ste Marie International Bridge. I spoke to the General Manager of the SSM Authority who advised me that the abatements it provided to its duty free did not result in the SSM Authority being “out-of-pocket”. The SSM Authority is a Crown corporation. While I am not privy to its financial dealings with the Federal government, I assume that it received COVID relief money from the Federal government.

J. Authority has not Favoured the US Duty Free

40. In paragraphs 101 to 104 of his Affidavit Mr. Pearce asserts that: (a) the operator of the US duty free was, in 2021, paying only percentage rent; and (b) the Authority has given preferential treatment to the operator of the US duty free by requiring that PBDF pay the base rent required by the Lease. This is unfair. The Authority negotiated an agreement with the operator of the US duty free that contemplated the temporary deferral of rent in 2021 similar to what was provided for in the First Rent Deferral. There is now an agreement in place with the operator of the US duty free that provides for a much smaller rent abatement than has been offered to PBDF and the deferred rent owing by the operator of the US duty free is being repaid, with interest.

TAB 15

the day upon which the notice, demand, request, consent or other instrument is delivered, or, if mailed, then seventy-two (72) hours following the date of mailing and the time period referred to in the notice begins to run from the time of delivery or seventy-two (72) hours following the date of mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving the notice and upon the giving of that notice, the address specified in it shall be considered to be the address of the party for the giving of notices under this Lease. If the postal service is interrupted or is substantially delayed, or is threatened to be interrupted, any notice, demand, request, consent or other instrument will only be delivered in person.

18.04 Registration

The Tenant will not register this Lease or any notice thereof on title to the Lands without the prior written consent of the Landlord and the Landlord's approval of the form and content of such registration.

18.05 Quiet Enjoyment

Provided the Tenant pays the Rent and other sums provided for under this Lease, and observes and performs all of the terms, covenants, and conditions on its part to be observed and performed, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the Term without hindrance or interruption by the Landlord or any other Person lawfully claiming by, through or under the Landlord subject, however, to the terms, covenants and conditions of this Lease.

18.06 Landlord's Co-Operation and Access

The Landlord will make commercially reasonable efforts to assist the Tenant with any reasonable request for co-operation in increasing the revenue to be generated from the Leased Premises, provided that such requests do not result in any interference with the Landlord's operations. The Landlord shall co-operate in order to allow vehicular traffic including cars, trucks and motor coaches, free and open access to the duty free shop operated at the Leased Premises.

18.07 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 the Tenant to discuss the impact of such introduction of or change in Applicable Laws to the Lease.

18.08 Unavoidable Delay

Notwithstanding anything to the contrary contained in this Lease, if any party hereto is *bona fide* delayed or hindered in or prevented from performance of any term, covenant or act required hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within an appropriate time period after the expiration of the period of such delay. However, the provisions of this Section 18.06 do not operate to excuse the Tenant from the prompt payment of Rent and any other payments required by this Lease.

TAB 16

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

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED

REFUSALS AND UNDERTAKINGS CHART

| REFUSALS | | | | | |
|--|---------------------|-----------------|--|---|---------------------------------|
| Refusals to answer questions on the examination of Tim Clutterbuck, dated May 30 th , 2023. | | | | | |
| Issue & relationship to pleadings or affidavit (Group the questions by issues.) | Question No. | Page No. | Specific question | Answer or precise basis for refusal | Disposition by the Court |
| 1. Interpretation of the Lease and rent relief under 18.07 Paragraph 17.b.ii of Justice Kimmel's April 4 th , 2023 endorsement | 67 | 22-24 | U/A: To provide copies of any emails, text messages or other written communication between the board members and operational staff between January 2020 and December 2021 that relates to the Duty Free stores' tenancies, both on the Canadian side and on the American side. | June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour. June 23, 2023 Answer: The Authority believes that this request raises issues of proportionality. During 2020 and 2021 there were 12 individuals who held office as Directors, two of who are no longer serving as Directors. The Authority | |

| | | | | | |
|--|--|--|--|---|--|
| | | | | <p>currently has over 80 employees.</p> <p>The only employees with whom Directors would have communicated involving operational issues are Mr. Rienas and Ms. Costa. Mr. Rienas is the General Manager. Ms. Costa is the CFO. Ms Costa and Mr. Rienas undertook searches of their current and archived e-mails from 2020 and 2021. These searches would have captured any e-mails received from the Directors. Aside from a generalized searches for e-mails relating to PBDF, specific searches were conducted using the following terms: "abatement", "deferral" and "18.07". If you wish to have any other (reasonable) word-specifics searches conducted by Ms Costa or Mr. Rienas of their e-mails, we would be please to consider such a request.</p> <p>July 7, 2023 Answer: With respect to the e-mail between the Authority's director: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) email and texts sent from or received into the directors' personal accounts are not under the control of the Authority. We question how personal e-mail exchanges between directors can be relevant to corporate decisions made by the Authority. If you wish to obtain this information, you will need to bring a Motion seeking same on</p> | |
|--|--|--|--|---|--|

| REFUSALS | | | | | |
|---|--------------|----------|---|---|--------------------------|
| Refusals to answer questions on the examination of Tim Clutterbuck, dated May 30 th , 2023. | | | | | |
| Issue & relationship to pleadings or affidavit (Group the questions by issues.) | Question No. | Page No. | Specific question | Answer or precise basis for refusal | Disposition by the Court |
| | | | | notice to the individual directors. | |
| 2. Interpretation of the Lease and rent relief under 18.07 Paragraph 17.b.ii of Justice Kimmel's April 4th, 2023 endorsement | 93 | 40 | U/A: to provide the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021. | <p>June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour.</p> <p>June 23, 2023 Answer: There were 39 meetings of the Authority's Board—22 regular meetings and 17 executive sessions—between January of 2020 and December of 2021. The Minutes of all meetings at which (a) Art 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 were addressed have been produced.</p> <p>July 7, 2023 Answer: Privilege is claimed over the identified Minutes for the following reasons:</p> <p>30 Apr 2021—The Minutes approve legal questions to be put to Gowling based on Report</p> <p>933/21. The legal questions and the answers are redacted from Report 938/21. There are no direct references to Art 18.07 in the Minutes. We will</p> | |

| REFUSALS | | | | | |
|--|--------------|----------|-------------------|--|--------------------------|
| Refusals to answer questions on the examination of Tim Clutterbuck, dated May 30 th , 2023. | | | | | |
| Issue & relationship to pleadings or affidavit (Group the questions by issues.) | Question No. | Page No. | Specific question | Answer or precise basis for refusal | Disposition by the Court |
| | | | | <p>produce these Minutes if you will agree that by producing the Minutes the Authority is not waiving privilege over the questions posed to Gowling and the answers provided.</p> <p>28 May, 8 Oct and 19 Nov 2021—The Authority's lawyers were present at the Meeting and the Minutes refer to the legal advice provided by Gowling.</p> <p>If PBDF insists on disclosure of these Minutes it will have to bring a Motion on 25-26 July 2023.</p> <p>For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.</p> | |

| UNDERTAKINGS | | | | | |
|--|---------------------|-----------------|--|--|---------------------------------|
| Outstanding undertakings given on the examination of Tim Clutterbuck, dated May 30 th , 2023. | | | | | |
| Issue & relationship to pleadings or affidavit (<i>Group the undertakings by issues.</i>) | Question No. | Page No. | Specific undertaking | Date answered or precise reason for not doing so | Disposition by the Court |
| <p>1. Interpretation of the Lease and rent relief under 18.07</p> <p>The Authority's duty of honest performance and good faith in contract</p> | 109 | 45 | To provide copies of the lease and agreements with the American Duty Free store [will advise what details can be released, if any] | <p>June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour.</p> <p>July 7, 2023 Answer: With respect to document relating to the US duty free, we believe that Her Honour has indicated that the relevance of this information/documentation will be determined at the up-coming attendance on 25-26 July 2023. We do not believe that the information/documentation is relevant and is properly redacted. We expect that you will file materials to establish the relevance of the information/documentation and serve the operator of the US duty free.</p> | |

| UNDERTAKINGS | | | | | |
|---|---------------------|-----------------|--|---|---------------------------------|
| Outstanding undertakings given on the examination of Tim Clutterbuck, dated May 30 th , 2023. | | | | | |
| Issue & relationship to pleadings or affidavit (<i>Group the undertakings by issues.</i>) | Question No. | Page No. | Specific undertaking | Date answered or precise reason for not doing so | Disposition by the Court |
| 2. Interpretation of the Lease and rent relief under 18.07 The Authority's duty of honest performance and good faith in contract | 130 | 54 | To provide an unredacted copy of the American Duty Free store's rent deferral agreement, if unable to provide, to advise why it is redacted. | June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour. July 7, 2023 Answer: see above | |

July 19th, 2023

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ROYAL BANK OF CANADA

Applicant

and

Court File No. CV-21-00673084-00CL

PEACE BRIDGE DUTY FREE INC.

Respondent

Email address of recipient: See Service List

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

Proceeding commenced at Toronto

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